

DR. NIXON L. TREYES, PETITIONER, VS. ANTONIO L. LARLAR, REV. FR. EMILIO L. LARLAR, HEDDY L. LARLAR, ET AL., RESPONDENTS.*G.R. No. 232579. September 08, 2020*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-232579/>**CAGUIOA, J:**

Under the Civil Code, when the brothers and sisters of a deceased married sister survive with her widower, the latter shall be entitled by law to one-half of the inheritance and the brothers and sisters to the other half[1] The Civil Code likewise states that this successional right of the legal heirs is vested in them from the very moment of the decedent's death.[2]

Given that successional rights are conferred by the Civil Code, a substantive law, the question to be resolved here by the Court is whether a prior determination of the status as a legal or compulsory heir in a separate special proceeding is a prerequisite to an ordinary civil action seeking for the protection and enforcement of ownership rights given by the law of succession. The Court now definitively settles this question once and for all.

Before the Court is a petition for review on certiorari[3] (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner Dr. Nixon L. Treyes (petitioner Treyes) assailing the Decision[4] dated August 18, 2016 (assailed Decision) and Resolution[5] dated June 1, 2017 (assailed Resolution) promulgated by the Court of Appeals, Cebu City (CA)[6] in CA-G.R. SP Case No. 08813, which affirmed the Resolution[7] dated July 15, 2014 and Order[8] dated August 27, 2014 issued by public respondent Hon. Kathrine A. Go (Go), in her capacity as presiding judge of the Regional Trial Court of San Carlos City, Branch 59 (RTC) in favor of private respondents Antonio L. Larlar (Antonio), Rev. Fr. Emilio L. Larlar (Emilio), Heddy L. Larlar (Heddy), Rene L. Larlar (Rene), Celeste L. Larlar (Celeste), Judy L. Larlar (Judy), and Yvonne L. Larlar (Yvonne) (collectively, the private respondents).

The Facts and Antecedent Proceedings

As culled from the records, the essential facts and antecedent proceedings are as follows:

On May 1, 2008, Rosie Larlar Treyes (Rosie), the wife of petitioner Treyes, passed away.[9] Rosie, who did not bear any children with petitioner Treyes, died without any will.[10] Rosie also left behind seven siblings, i.e., the private respondents Antonio, Emilio, Heddy, Rene, Celeste, Judy, and Yvonne.

At the time of her death, Rosie left behind 14 real estate properties,[11] situated in various locations in the Philippines, which she owned together with petitioner Treyes as their conjugal properties (subject properties).

Subsequently, petitioner Treyes executed two Affidavits of Self-Adjudication dated September 2, 2008[12] and May 19, 2011.[13] The first Affidavit of Self-Adjudication was registered by petitioner Treyes with the Register of Deeds (RD) of Marikina City on March 24, 2011, while the second Affidavit of Self-Adjudication was registered with the RD of San Carlos City, Negros Occidental on June 5, 2011. In these two Affidavits of Self-Adjudication, petitioner Treyes transferred the estate of Rosie unto himself, claiming that he was the sole heir of his deceased spouse, Rosie.[14]

As alleged by the private respondents, they sent a letter dated February 13, 2012 to petitioner Treyes requesting for a conference to discuss the settlement of the estate of their deceased sister, Rosie. The private respondents maintain that they never heard from petitioner Treyes regarding their request.[15] Undaunted, the private respondents again wrote to petitioner Treyes on April 3, 2012, requesting for the settlement of their sister's estate, but this request fell on deaf ears.[16]

The private respondents then alleged that sometime during the latter part of 2012, they discovered to their shock and dismay that the TCTs previously registered in the name of their sister and petitioner Treyes had already been cancelled, except TCT No. M-43623 situated in Tanay, Rizal and TCT No. T-627723 situated in Cabuyao, Laguna. New titles had been issued in the name of petitioner Treyes on the basis of the two Affidavits of Self-Adjudication.[17]

Hence, the private respondents filed before the RTC a Complaint[18] dated July 12, 2013 (Complaint) for annulment of the Affidavits of Self-Adjudication, cancellation of TCTs, reconveyance of ownership and possession, partition, and damages against petitioner Treyes, the RD of Marikina, the RD of the Province of Rizal, and the RD of the City of San Carlos, Negros Occidental. The case was docketed as Civil Case No. RTC-1226.

In their Complaint, the private respondents alleged that petitioner Treyes fraudulently caused the transfer of the subject properties to himself by executing the two Affidavits of Self-Adjudication and refused to reconvey the shares of the private respondents who, being the brothers and sisters of Rosie, are legal heirs of the deceased. Aside from asking for the declaration of the nullity of the Affidavits of Self-Adjudication, the private respondents also prayed for the cancellation of all the TCTs issued in favor of petitioner Treyes, the reconveyance to the private respondents of their successional share in the estate of Rosie, the partition of the estate of Rosie, as well as moral damages, exemplary damages, attorney's fees, and other litigation expenses.[19]

As alleged by petitioner Treyes, his household helper, Elizabeth Barientos (Barientos), was supposedly aggressively approached on October 18, 2013 by two persons who demanded that she receive a letter for and on behalf of petitioner Treyes. Barientos refused. As it turned out, the said letter was the summons issued by the RTC addressed to petitioner Treyes in relation to the Complaint filed by the private respondents.[20]

Petitioner Treyes, through counsel, then filed an Entry of Special Appearance and Motion to Dismiss dated October 25, 2013 (first Motion to Dismiss), asking for the dismissal of the Complaint due to lack of jurisdiction over the person of petitioner Treyes.[21] Eventually, however, a re-service of summons was ordered by the RTC in its Order dated May 12, 2014.[22] On June 5, 2014, petitioner Treyes was personally served with another Summons[23] dated May 12, 2014 together with a copy of the Complaint.[24]

Petitioner Treyes then filed another Motion to Dismiss[25] dated June 20, 2014 (second Motion to Dismiss), arguing that the private respondents' Complaint should be dismissed on the following grounds: (1) improper venue; (2) prescription; and (3) lack of jurisdiction over the subject matter.

In its Resolution[26] dated July 15, 2014, the RTC denied for lack of merit petitioner Treyes' second Motion to Dismiss. Nevertheless, the RTC held that it did not acquire jurisdiction over the Complaint's third cause of action, i.e., partition:

x x x A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self Adjudication; 2) Reconveyance (3) Partition; and 4) Damages. Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.[27]

Unsatisfied with the aforesaid Resolution of the RTC, petitioner Treyes filed an Omnibus Motion[28] dated July

28, 2014 (1) to reconsider the Resolution dated August 15, 2014 and (2) to defer filing of Answer.

In response, private respondents filed their Opposition[29] dated August 19, 2014 to the Omnibus Motion of petitioner Treyes dated July 28, 2014, to which petitioner Treyes responded with his Reply[30] with leave dated August 27, 2014.

In its Order[31] dated August 27, 2014, the RTC denied the Omnibus Motion and directed petitioner Treyes to file his responsive pleading within 15 days from receipt of the Order.

Petitioner Treyes then filed before the CA a petition for certiorari[32] dated October 28, 2014 under Rule 65 with urgent prayer for the immediate issuance of a temporary restraining order and/or writ of preliminary injunction, asserting that the RTC's denial of his second Motion to Dismiss was committed with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Ruling of the CA

In its assailed Decision, the CA denied petitioner Treyes' petition for certiorari. The dispositive portion of the assailed Decision of the CA reads:

WHEREFORE, the petition is DENIED. The Order dated dated (sic) August 27, 2014, and the Resolution dated July 15, 2014 are AFFIRMED.

SO ORDERED.[33]

The CA held that the RTC did not commit grave abuse of discretion in denying petitioner Treyes' second Motion to Dismiss. Since the Complaint primarily seeks to annul petitioner Treyes' Affidavits of Self-Adjudication, which partakes the nature of an ordinary civil action, the CA found that the RTC had jurisdiction to hear and decide the private respondents' Complaint. Further, the CA held that since the case was an ordinary civil action, the proper venue is San Carlos City, Negros Occidental. Lastly, the CA held that the action of the private respondents is not barred by prescription.

Petitioner Treyes filed a Motion for Reconsideration[34] dated September 26, 2016, which was subsequently denied by the CA in its assailed Resolution.[35]

Hence, the instant Petition.

The private respondents filed their Comment[36] dated May 16, 2018 to the Petition, to which petitioner Treyes responded with his Reply[37] dated September 17, 2018.

The Issue

The central question to be resolved by the Court is whether or not the CA was correct in ruling that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner Treyes' second Motion to Dismiss.

The Court's Ruling

In the instant case, petitioner Treyes maintains that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying its second Motion to Dismiss, arguing, in the main, that the RTC should have dismissed the private respondents' Complaint on the basis of three grounds: a) improper venue, b) prescription, and c) lack of jurisdiction over the subject matter and, corrolarily, lack of real parties in interest. The Court discusses these grounds ad seriatim.

I. Improper Venue

Citing Rule 73, Section 1 of the Rules,[38] petitioner Treyes posits that the correct venue for the settlement of a decedent's estate is the residence of the decedent at the time of her death, which was at No. 1-C, Guatemala Street, Loyola Grand Villas, Loyola Heights, Katipunan Avenue, Quezon City. Hence, petitioner Treyes maintains that the settlement of her estate should have been filed with the RTC of Quezon City, and not at San Carlos City, Negros Occidental.

The Court finds and holds that the Complaint cannot be dismissed on the ground of improper venue on the basis of Rule 73 because such Rule refers exclusively to the special proceeding of settlement of estates and NOT to ordinary civil actions. Invoking Rule 73 to allege improper venue is entirely inconsistent with petitioner Treyes' assertion in the instant Petition[39] that the Complaint is not a special proceeding but an ordinary civil action.

Moreover, the Court finds that improper venue as a ground for the dismissal of the Complaint was already deemed waived in accordance with the Omnibus Motion Rule.

According to Rule 9, Section 1 of the Rules, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except with respect to the grounds of (1) lack of jurisdiction over the subject matter; (2) *litis pendentia* (3) *res judicata*; and (4) prescription of the action. In turn, Rule 15, Section 8 states that a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

Hence, under the Omnibus Motion Rule, when the grounds for the dismissal of a Complaint under Rule 16, Section I[40] are not raised in a motion to dismiss, such grounds, except the grounds of lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription, are deemed waived.

In the instant case, prior to the filing of the second Motion to Dismiss, the first Motion to Dismiss was already filed by petitioner Treyes asking for the dismissal of the Complaint solely on the ground of lack of jurisdiction over the person of petitioner Treyes.[41] The defense of improper venue was already very much available to petitioner Treyes at the time of the filing of the first Motion to Dismiss. Under the Rules, raising the ground of improper venue would not have been prejudicial to petitioner Treyes' cause as raising such defense could not have been deemed a voluntary appearance.[42] Hence, there was no valid reason to justify the failure to invoke the ground of improper venue in the first Motion to Dismiss. Stated differently, as the issue of improper venue was not raised in the first Motion to Dismiss, then this ground is deemed already waived and could no longer be raised in the second Motion to Dismiss.[43]

II. Prescription

Petitioner Treyes also argues that the RTC committed grave abuse of discretion in not dismissing the Complaint since the period for the filing of the Complaint had already supposedly prescribed.

The Court likewise finds this argument to be without merit.

The basis of petitioner Treyes in arguing that the Complaint is already barred by prescription is Rule 74, Section 4 of the Rules,[44] which states that an heir or other persons unduly deprived of lawful participation in the estate may compel the settlement of the estate in the courts at any time within two years after the settlement and distribution of an estate.

The Court stresses that Rule 74 pertains exclusively to the settlement of estates, which is a special proceeding and NOT an ordinary civil action.[45]

As well, this argument of petitioner Treyes invoking prescription on the basis of Rule 74 is again wholly inconsistent with his main theory that the instant Complaint is not a special proceeding but an ordinary civil action

for annulment of the Affidavits of Self-Adjudication, cancellation of TCTs, reconveyance of ownership and possession, and damages.[46]

Moreover, as clarified by the Court in *Sampilo, et al. v. Court of Appeals, et al.*,^[47] the provisions of Rule 74, Section 4 barring distributees or heirs from objecting to an extrajudicial partition after the expiration of two years from such extrajudicial partition is applicable only: (1) to persons who have participated or taken part or had notice of the extrajudicial partition, and (2) when the provisions of Section 1 of Rule 74 have been strictly complied with, i.e., that all the persons or heirs of the decedent have taken part in the extrajudicial settlement or are represented by themselves or through guardians.

Both requirements are absent here as it is evident that not all the legal heirs of Rosie participated in the extrajudicial settlement of her estate as indeed, it was only petitioner Treyes who executed the Affidavits of Self-Adjudication.

In this regard, it is well to note that it is the prescriptive period pertaining to constructive trusts which finds application in the instant case.

To digress, the Civil Code identifies two kinds of trusts, i.e., express and implied. Express trusts are created by the intention of the trustor or of the parties while implied trusts come into being by operation of law.^[48] As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, "[e]xpress and implied trusts differ chiefly in that express trusts are created by the acts of the parties, while implied trusts are raised by operation of law, either to carry a presumed intention of the parties or to satisfy the demands of justice or protect against fraud."^[49]

An implied trust is further divided into two types, i.e., resulting and constructive trusts.^[50] A resulting trust exists when a person makes or causes to be made a disposition of property under circumstances which raise an inference that he/she does not intend that the person taking or holding the property should have the beneficial interest in the property.^[51]

On the other hand, a constructive trust exists when a person holding title to property is subject to an equitable duty to convey it to another on the ground that he/she would be unjustly enriched if he/she were permitted to retain it.^[52] The duty to convey the property arises because it was acquired through fraud, duress, undue influence, mistake, through a breach of a fiduciary duty, or through the wrongful disposition of another's property.^[53]

An example of a constructive trust is found in Article 1456 of the Civil Code,^[54] which states that "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." In *Marquez v. Court of Appeals*,^[55] the Court held that in a situation where an heir misrepresents in an affidavit of self-adjudication that he is the sole heir of his wife when in fact there are other legal heirs, and thereafter manages to secure a certificate of title under his name, then "a constructive trust under Article 1456 [i]s established. Constructive trusts are created in equity in order to prevent unjust enrichment."^[56] This is precisely the situation in the instant case.

In this situation, it has been settled in a long line of cases that "an action for reconveyance based on an implied or constructive trust prescribes in [10] years from the issuance of the Torrens title [in the name of the trustee] over the property."^[57] The 10-year prescriptive period finds basis in Article 1144 of the Civil Code, which states that an action involving an obligation created by law must be brought within 10 years from the time the right of action accrues.

In cases wherein fraud was alleged to have been attendant in the trustee's registration of the subject property in his/her own name, the prescriptive period is 10 years reckoned from the date of the issuance of the original

certificate of title or TCT since such issuance operates as a constructive notice to the whole world, the discovery of the fraud being deemed to have taken place at that time.[58]

Accordingly, it is clear here that prescription has not set in as the private respondents still have until 2021 to file an action for reconveyance, given that the certificates of title were issued in the name of petitioner Treyes only in 2011.

Therefore, considering the foregoing discussion, the ground of prescription raised by petitioner Treyes is unmeritorious.

III.

The Necessity of a Prior Determination of Heirship in a Separate Special

Proceeding

The Court now proceeds to discuss the centerpiece of petitioner Treyes' Petition – that the RTC has no jurisdiction to hear, try, and decide the subject matter of the private respondents' Complaint because the determination of the status of the legal heirs in a separate special proceeding is a prerequisite to an ordinary suit for recovery of ownership and possession of property instituted by the legal heirs.

Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiffs cause of action.[59]

In the instant case, it is readily apparent from the allegations in the Complaint filed by the private respondents that the action was not instituted for the determination of their status as heirs, as it was their position that their status as heirs was already established ipso jure without the need of any judicial confirmation. Instead, what the Complaint alleges is that the private respondents' rights over the subject properties, by virtue of their being siblings of the deceased, must be enforced by annulling the Affidavits of Self-Adjudication and ordering the reconveyance of the subject properties.

Hence, as correctly held by the RTC in its Resolution[60] dated July 15, 2014, the RTC has jurisdiction over the subject matter of the Complaint, considering that the law confers upon the RTC jurisdiction over civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds P20,000.00 for civil actions outside Metro Manila, or where the assessed value exceeds P50,000.00 for civil actions in Metro Manila.[61]

The Case of Heirs of Magdaleno Ypon v. Ricaforte, et al. and Preceding Cases

Petitioner Treyes cited Heirs of Magdaleno Ypon v. Ricaforte, et al. [62] (Ypon), as well as the cases that preceded it, i.e., Heirs of Guido and Isabel Yaptinchay v. Del Rosario[63] (Yaptinchay), Portugal v. Portugal-Beltran[64] (Portugal), and Reyes v. Enriquez[65] (Reyes) to buttress his main argument that since the private respondents have yet to establish in a special proceeding their status as legal heirs of Rosie, then the ordinary civil action they instituted must be dismissed for lack of jurisdiction.

In Ypon, which contains analogous factual circumstances as the instant case, the therein petitioners filed a complaint for Cancellation of Title and Reconveyance with Damages against the therein respondent. The therein petitioners alleged that, with the decedent having died intestate and childless, and with the existence of other legal heirs, the therein respondent invalidly executed an Affidavit of Self-Adjudication and caused the transfer of the

certificates of title covering the properties of the decedent to himself. The RTC dismissed the complaint holding that it failed to state a cause of action since the therein petitioners had yet to establish their status as heirs.

In sustaining the RTC's dismissal of the complaint, the Court in Ypon held that:

As stated in the subject complaint, petitioners, who were among the plaintiffs therein, alleged that they are the lawful heirs of Magdaleno and based on the same, prayed that the Affidavit of Self-Adjudication executed by Gaudioso be declared null and void and that the transfer certificates of title issued in the latter's favor be cancelled. While the foregoing allegations, if admitted to be true, would consequently warrant the reliefs sought for in the said complaint, the rule that the determination of a decedent's lawful heirs should be made in the corresponding special proceeding precludes the RTC, in an ordinary action for cancellation of title and reconveyance, from granting the same. In the case of *Heirs of Teofilo Gabatan v. CA*, the Court, citing several other precedents, held that the determination of who are the decedent's lawful heirs must be made in the proper special proceeding for such purpose, and not in an ordinary suit for recovery of ownership and/or possession, as in this case:

Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that 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 the early case of *Litam, et al. v. Rivera*, this Court ruled that the declaration of heirship must be made in a special proceeding, and not in an independent civil action. This doctrine was reiterated in *Solvio v. Court of Appeals* x x x[.]

In the more recent case of *Milagros Joaquin v. Lourdes Reyes*, the Court reiterated its ruling that matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights. Citing the case of *Agapay v. Palang*, this Court held that the status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property. [66]

Nevertheless, the Court likewise added in Ypon that there are circumstances wherein a determination of heirship in a special proceeding is not a precondition for the institution of an ordinary civil action for the sake of practicality, i.e., (1) when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and (2) when a special proceeding had been instituted but had been finally terminated and cannot be re-opened:

By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened. [67]

Ordinary Civil Actions vis-à-vis Special Proceedings

In the main, Ypon, citing certain earlier jurisprudence, held that the determination of a decedent's lawful heirs

should be made in the corresponding special proceeding, precluding the RTC in an ordinary action for cancellation of title and reconveyance from making the same.

According to Rule 1, Section 3(c) of the Rules, the purpose of a special proceeding is to establish a status, right, or particular fact. As held early on in *Hagans v. Wislizenus*,^[68] a "special proceeding" may be defined as "an application or proceeding to establish the status or right of a party, or a particular fact."^[69] In special proceedings, the remedy is granted generally upon an application or motion.^[70]

In *Pacific Banking Corp. Employees Organization v. Court of Appeals*,^[71] the Court made the crucial distinction between an ordinary action and a special proceeding:

Action is the act by which one sues another in a court of justice for the enforcement or protection of a right, or the prevention or redress of a wrong while special proceeding is the act by which one seeks to establish the status or right of a party, or a particular fact. Hence, action is distinguished from special proceeding in that the former is a formal demand of a right by one against another, while the latter is but a petition for a declaration of a status, right or fact. Where a party-litigant seeks to recover property from another, his remedy is to file an action. Where his purpose is to seek the appointment of a guardian for an insane, his remedy is a special proceeding to establish the fact or status of insanity calling for an appointment of guardianship.^[72]

Hence, the main point of differentiation between a civil action and a special proceeding is that in the former, a party sues another for the enforcement or protection of a right which the party claims he/she is entitled to,^[73] such as when a party-litigant seeks to recover property from another,^[74] while in the latter, a party merely seeks to have a right established in his/her favor.

Applying the foregoing to ordinary civil actions for the cancellation of a deed or instrument and reconveyance of property on the basis of relationship with the decedent, i.e., compulsory or intestate succession, the plaintiff does not really seek to establish his/her right as an heir. In truth, the plaintiff seeks the enforcement of his/her right brought about by his/her being an heir by operation of law.

Restated, the party does not seek to establish his/her right as an heir because the law itself already establishes that status. What he/she aims to do is to merely call for the nullification of a deed, instrument, or conveyance as an enforcement or protection of that right which he/she already possesses by virtue of law.

Moreover, it is likewise noted that ordinary civil actions for declaration of nullity of a document, nullity of title, recovery of ownership of real property, or reconveyance are actions in personam.^[75] And thus, they only bind particular individuals although they concern rights to tangible things.^[76] Any judgment therein is binding only upon the parties properly impleaded.^[77] Hence, any decision in the private respondents' ordinary civil action would not prejudice non-parties.

To emphasize, any holding by the trial court in the ordinary civil action initiated by the private respondents shall only be in relation to the cause of action, i.e., the annulment of the Affidavits of Self-Adjudication executed by petitioner Treyes and reconveyance of the subject properties, and shall only be binding among the parties therein.

At this juncture, the Court now deems it proper and opportune to revisit existing jurisprudence on the requisite of establishing one's heirship in a prior special proceeding before invoking such heirship in an ordinary civil action.

The Transmission of the Rights of Heirs at
the Precise Moment of Death of the
Decedent under the Civil Code

That the private respondents do not really seek in their Complaint the establishment of their rights as intestate heirs but, rather, the enforcement of their rights already granted by law as intestate heirs finds basis in Article 777

of the Civil Code, which states that the rights of succession are transmitted from the moment of the death of the decedent.

The operation of Article 777 occurs at the very moment of the decedent's death – the transmission by succession occurs at the precise moment of death and, therefore, the heir is legally deemed to have acquired ownership of his/her share in the inheritance at that very moment, "and not at the time of declaration of heirs, or partition, or distribution." [78]

Hence, the Court has held that the "[t]itle or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared 'heirs.'" [79]

In *Bonilla, et al. v. Barcena, et al.*, [80] the Court held that:

"[F]rom the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, x x x [t]he right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings." [81]

In fact, in partition cases, even before the property is judicially partitioned, the heirs are already deemed co-owners of the property. Thus, in partition cases, the heirs are deemed real parties in interest without a prior separate judicial determination of their heirship. [82] Similarly, in the summary settlement of estates, the heirs may undertake the extrajudicial settlement of the estate of the decedent amongst themselves through the execution of a public instrument even without a prior declaration in a separate judicial proceeding that they are the heirs of the decedent. [83] If there is only one legal heir, the document usually executed is an affidavit of self-adjudication even without a prior judicial declaration of heirship.

The Civil Code identifies certain relatives who are deemed compulsory heirs and intestate heirs. They refer to relatives that become heirs by virtue of compulsory succession or intestate succession, as the case may be, by operation of law.

In the instant case, Article 1001 states that brothers and sisters, or their children, who survive with the widow or widower, shall be entitled to one-half of the inheritance, while the surviving spouse shall be entitled to the other half:

Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half. (953-837a).

Hence, subject to the required proof, without any need of prior judicial determination, the private respondents siblings of Rosie, by operation of law, are entitled to one-half of the inheritance of the decedent. Thus, in filing their Complaint, they do not seek to have their right as intestate heirs established, for the simple reason that it is the law that already establishes that right. What they seek is the enforcement and protection of the right granted to them under Article 1001 in relation to Article 777 of the Civil Code by asking for the nullification of the Affidavits of Self-Adjudication that disregard and violate their right as intestate heirs.

As correctly explained by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe) in her Separate Opinion, "a prior declaration of heirship in a special proceeding should not be required before an heir may assert successional rights in an ordinary civil action aimed only to protect his or her interests in the estate. Indeed, the legal heirs of a decedent should not be rendered helpless to rightfully protect their interests in the estate while there is yet no special proceeding." [84]

To stress once more, the successional rights of the legal heirs of Rosie are not merely contingent or expectant — they vest upon the death of the decedent. By being legal heirs, they are entitled to institute an action to protect

their ownership rights acquired by virtue of succession and are thus real parties in interest in the instant case. To delay the enforcement of such rights until heirship is determined with finality in a separate special proceeding would run counter to Article 777 of the Civil Code which recognizes the vesting of such rights immediately — without a moment's interruption — upon the death of the decedent.

The Originating Case of *Litam, et al. v. Espiritu, et al.*

The doctrine relied upon by petitioner Treyes, laid down in *Ypon, Yaptinchay, Portugal, and Reyes*, traces its origin to the 1956 case of *Litam, et al. v. Espiritu, et al.*[85] (*Litam*).

It then behooves the Court to closely examine this originating case to see whether the development of jurisprudence, finding its current reincarnation in *Ypon*, is faithful to the Court's ruling in *Litam*.

In *Litam*, a special proceeding, i.e., Special Proceeding No. 1537, for the settlement of the Intestate Estate of the deceased Rafael Litam (Rafael), was instituted by one of the supposed sons of the latter, i.e., Gregorio Dy Tam (Gregorio). It was alleged that the children of Rafael, Gregorio and his siblings, were begotten "by a marriage celebrated in China in 1911 with Sia Khin [(Khin)], now deceased" and that Rafael "contracted in 1922 in the Philippines another marriage with Marcosa Rivera [(Marcosa)], Filipino citizen." In Special Proceeding No. 1537, Marcosa denied the alleged marriage of Rafael to Khin and the alleged filiation of Gregorio and his siblings, and prayed that her nephew, Arminio Rivera (Arminio), be appointed administrator of the intestate estate of Rafael. In due course, the court issued the letters of administration to Arminio, who assumed his duties as such, and, later, submitted an inventory of the alleged estate of Rafael.

During the subsistence of the special proceeding, Gregorio and his siblings filed an ordinary civil action complaint, i.e., Civil Case No. 2071, against Marcosa and Arminio in the same court hearing the special proceeding for the settlement of the intestate estate of the decedent, praying for the delivery of the decedent's properties possessed by Marcosa and Arminio to the administrator of the estate of Rafael, as well as damages.

After trial, the Court of First Instance (CFI) issued its judgment dismissing Civil Case No. 2071 and declaring the properties in question to be the exclusive, separate and paraphernal properties of Marcosa. The CFI further declared that Gregorio and his siblings "are not the children of the deceased Rafael Litam, and that his only heir is his surviving wife, Marcosa Rivera." [86]

It must be noted that the Court, in upholding the aforementioned judgment of the CFI, did not call for the dismissal of Civil Case No. 2071 because it corollarily involved the issue of heirship in an ordinary civil action. The CFI did not hold whatsoever that Gregorio and his siblings were not real parties in interest and that their complaint failed to state a cause of action because their complaint invoked the issue of heirship.

In fact, it must be noted that the Court even affirmed the CFI's judgment in the ordinary civil action, and discussed at length and pronounced its findings as to the status of Gregorio and his siblings as heirs, holding that they "have utterly failed to prove their alleged status as children of Rafael Litam by a marriage with Sia Khin." In plain terms, the Court, in upholding the CFI Decision, affirmed the dismissal of the ordinary civil action, not because it touched upon the issue of heirship, but because the petitioners failed to present sufficient evidence proving their heirship and that the evidence on record actually proved that they were not heirs of Rafael.

The Court found issue with the CFI's Decision only insofar as it made a categorical pronouncement in its dispositive portion that Marcosa was the "only" heir of the decedent, ordering a slight modification in the CFI's Decision:

Likewise, we are of the opinion that the lower court should not have declared, in the decision appealed from,

that Marcosa Rivera is the only heir of the decedent, for such declaration is improper in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceeding 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.[87]

What is thus apparent from the Court's Decision in Litam is that the CFI was not found to be at fault in appreciating evidence and examining the issue of the alleged heirship of the petitioners in resolving the ordinary civil action. To reiterate, the Court even concurred with the CFI's appreciation of evidence on the heirship of the petitioners therein that were presented during trial. The Court made no pronouncement whatsoever that since Gregorio and his siblings had not previously obtained a declaration of heirship in a special proceeding, then they should not be considered real parties in interest. The Court could not have made such pronouncement because Gregorio and his siblings had utterly failed to prove that they were the heirs of Rafael.

What the Court only held was that it was improper for the CFI to have included in the dispositive portion of its Decision a definite and categorical judgment as to Marcosa's status as being the "only" heir as it was not the object and purpose of the ordinary civil action, which prayed in the main for the reconveyance of the subject properties therein, and wherein a separate special proceeding, i.e., Special Proceeding No. 1537, was already pending that focused precisely on the contentious issue of whether or not there was an earlier marriage of Rafael to Khin, and whether Gregorio, et al. were the issue of said marriage.

Thus, the Court's ruling in Litam was that in an ordinary civil action for reconveyance of property, the invocation of the status of the parties as heirs in the complaint does not preclude the determination of the merits of the said ordinary civil action despite the pendency of the special proceeding for the settlement of the intestate estate of Rafael. What was held to be improper by the Court in Litam was the making by the RTC of a conclusive, definite, and categorical declaration in the ordinary civil action regarding Marcosa being the "only" heir of the decedent when there was already pending before it a special proceeding tackling the contending issues of heirship posed by Gregorio, et al.

Hence, a closer look at Litam reveals that the underlying foundation of the doctrine invoked by the petitioners is inapt.

Jurisprudential Support on the Institution of
an Ordinary Civil Action by Legal Heirs
arising out of a Right based on Succession
without the Necessity of a Previous Judicial
Declaration of Heirship

To be sure, even prior to the promulgation of Litam which, as already explained, does not actually support the doctrine that a determination of heirship in a prior special proceeding is a prerequisite for the resolution of an ordinary civil action, the Court had already pronounced that the legal heirs may commence an ordinary civil action arising out of a right based on succession without the necessity of a previous and separate judicial declaration of their status as such.

As early as 1939, the Court En Banc, in *De Vera, et al. v. Galauran*[88] (*De Vera*), held that:

Arsenio de Vera, as surviving spouse of the deceased Isabel Domingo, acting for himself and as guardian ad litem of six minors heirs, instituted an action against Cleotilde Galauran in the Court of First Instance of Rizal for the annulment of a deed of sale of a registered parcel of land. It is alleged in the complaint that Arsenio de Vera and his wife Isabel Domingo, now deceased, have mortgaged their property to the defendant to secure a loan received from him, but said defendant illegally made them sign a deed which they then believed to be of mortgage and which turned out later to be of pacto de retro sale; and that the six minor children named in the

complaint are the legitimate children and legitimate heirs of the deceased Isabel Domingo. A demurrer was interposed by the defendant alleging that the plaintiffs have no cause of action, for they have not been declared legal heirs in a special proceeding. The demurrer was sustained, and, on failure of plaintiffs to amend, the action was dismissed. Wherefore, this appeal.

Unless there is pending a special proceeding for the settlement of the estate of a deceased person, the legal heirs may commence an ordinary action arising out of a right belonging to the ancestor, without the necessity of a previous and separate judicial declaration of their status as such.[89]

It must be noted that the Court's pronouncement in *De Vera*, citing *Hernandez, et al. v. Padua, et al.*,^[90] *Uy Coque, et al. v. Sioca, et al.*,^[91] *Mendoza Vda. de Bonnevie v. Cecilio Vda. de Pardo*,^[92] and *Government of the Philippine Islands v. Serafica*,^[93] is a decision of the Court En Banc which cannot be overturned by a ruling of a Division of the Court. The Constitution provides that no doctrine or principle of law laid down by the Court in a decision rendered En Banc may be modified or reversed except by the Court sitting En Banc.^[94]

Subsequently, in 1954, the Court En Banc promulgated its Decision in *Cabuyao v. Caagbay, et al.*^[95] (*Cabuyao*). In the said case, the lower court dismissed a case filed by an alleged lone compulsory heir of the decedent for quieting of title covering the property inherited by the plaintiff from the decedent. The lower court dismissed the aforesaid complaint because "no action can be maintained until a judicial declaration of heirship has been legally secured."^[96]

In reversing the order of the lower court, the Court En Banc noted that "as early as 1904, this Court entertained, in the case of [*Mijares v. Nery*] (3 Phil., 195), the action of an acknowledged natural child to recover property belonging to his deceased father — who had not been survived by any legitimate descendant — notwithstanding the absence of a previous declaration of heirship in favor of the plaintiff x x x"^[97] and held that "[t]he right to assert a cause of action as an alleged heir, although he has not been judicially declared to be so, has been acknowledged in a number of subsequent cases."^[98]

In 1955, the Court En Banc reiterated the foregoing holding in *Atun, et al. v. Nuñez, et al.*,^[99] (*Atun*) holding that "[t]he rule is settled that the legal heirs of a deceased may file an action arising out of a right belonging to their ancestor, without a separate judicial declaration of their status as such[.]"^[100]

Similarly, in *Marabilles, et al. v. Sps. Quito*^[101] (*Marabilles*) which was also decided by the Court En Banc a month before *Litam* and involves a factual milieu comparable to the instant case, the petitioners therein filed an ordinary civil action for the recovery of a parcel of land on the basis of their being heirs. The lower court dismissed the action on the ground that the petitioners therein did not have legal capacity to sue because "judicial declaration of heirship is necessary in order that an heir may have legal capacity to bring the action to recover a property belonging to the deceased."^[102]

The Court En Banc reversed the lower court's dismissal of the action and unequivocally held that as an heir may assert his right to the property of a deceased, no previous judicial declaration of heirship is necessary:

Another ground on which the dismissal is predicted is that the complaint states no cause of action because while it appears in the complaint that the land was transferred to one Guadalupe Saralde, deceased wife of Defendant Alejandro Quito, there is no allegation that said Alejandro Quito and his daughter Aida, a co-Defendant, had been [judicially] declared heirs or administrators of the estate of the deceased. Because of this legal deficiency, the court has concluded that Plaintiffs have no cause of action against Defendants because there is no legal bond by which the latter may be linked with the property.

This conclusion is also erroneous. The rule is that, to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint should be considered, and considering the facts herein

alleged, there is enough ground to proceed with the case. Thus, it appears in the complaint that Guadalupe Saralde is the wife of Alejandro Quito, the Defendant, and as said Guadalupe has already died, under the law, the husband and his daughter Aida are the legal heirs. We have already said that in order that an heir may assert his right to the property of a deceased, no previous judicial declaration of heirship is necessary. It was therefore a mistake to dismiss the complaint on this ground.[103]

To reiterate, once again, the Court's holdings in Cabuyao and Marabilles that an heir may assert his/her right to the property of the decedent without the necessity of a previous judicial declaration of heirship are decisions of the Court En Banc that cannot be reversed by a ruling of a Division of the Court. Ypon, Yaptinchay, Portugal, and Reyes, which are all decisions of the Court's Divisions, in so far as they hold that a prior special proceeding for declaration of heirship is a prerequisite for the assertion by an heir of his/her ownership rights acquired by virtue of succession in an ordinary civil action, did not, as they could not, overturn the Court En Banc's holdings in De Vera, Cabuyao, Atun, and Marabilles that heirs should be able to assert their successional rights without the necessity of a previous judicial declaration of heirship.

Similarly, in *Morales, et al. v. Yañez*, [104] which involved an ordinary civil action for the recovery of certain parcels of land, the Court held that the enforcement or protection of rights of heirs from encroachments made or attempted may be undertaken even before their judicial declaration as heirs is made in a special proceeding:

Appellants contend, however, that for Defendant to acquire a vested right to Eugenio's property, he must first commence proceedings to settle Eugenio's estate — which he had not done, There is no merit to the contention. This Court has repeatedly held that the right of heirs to the property of the deceased is vested from the moment of death. Of course the formal declaration or recognition or enforcement of such right needs judicial confirmation in proper proceedings. But we have often enforced or protected such rights from encroachments made or attempted before the judicial declaration. Which can only mean that the heir acquired hereditary rights even before judicial declaration in testate or intestate proceedings.[105]

In *Gayon v. Gayon*, [106] in denying the argument posed by the defendants therein that they cannot be made defendants in a suit filed against the decedent because "heirs cannot represent the dead defendant, unless there is a declaration of heirship," [107] the Court held that the heirs may be sued even without a prior declaration of heirship made in a special proceeding:

Inasmuch, however, as succession takes place, by operation of law, "from the moment of the death of the decedent" and "(t)he inheritance includes all the property, rights and obligations of a person which are not extinguished by his death," it follows that if his heirs were included as defendants in this case, they would be sued, not as "representatives" of the decedent, but as owners of an aliquot interest in the property in question, even if the precise extent of their interest may still be undetermined and they have derived it from the decedent. Hence, they may be sued without a previous declaration of heirship x x x.[108]

In *Bonilla, et al. v. Barcena, et al.*, [109] an ordinary civil action was instituted by a surviving spouse to quiet title over certain parcels of land. When the surviving spouse passed away during the pendency of the action, the lower court immediately dismissed the case on the ground that a dead person cannot be a real party in interest and has no legal personality to sue. The Court reversed the lower court's ruling, holding that the right of the heirs to the property of the deceased vests in them even before judicial declaration of heirship in a special proceeding. Thus, the lower court should have allowed the substitution by the heirs of the deceased even without any prior judicial determination of their status as heirs:

The respondent Court, however, instead of allowing the substitution, dismissed the complaint on the ground that a dead person has no legal personality to sue. This is a grave error. Article 777 of the Civil Code provides "that the rights to the succession are transmitted from the moment of the death of the decedent." From the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights

and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law. The moment of death is the determining factor when the heirs acquire a definite right to the inheritance whether such right be pure or contingent. The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings. When Fortunata Barcena, therefore, died her claim or right to the parcels of land in litigation in Civil Case No. 856, was not extinguished by her death but was transmitted to her heirs upon her death. Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case. There is, therefore, no reason for the respondent Court not to allow their substitution as parties in interest for the deceased plaintiff.[110]

Subsequently, the Court dealt with the same issue in *Baranda, et al. v. Baranda, et al.*,^[111] wherein the therein petitioners, claiming to be the legitimate heirs of the decedent, filed a complaint against the therein respondents for the annulment of the sale and the reconveyance of the subject lots. While the lower court initially ruled in favor of the therein petitioners, the appellate court reversed the lower court's ruling because, among other reasons, the therein petitioners are not real parties in interest, having failed to establish in a prior special proceeding their status as heirs.

The Court reversed the appellate court's ruling and held that the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided only that there is no pending special proceeding for the settlement of the decedent's estate:

There is also the issue of the capacity to sue of the petitioners who, it is claimed by the private respondents, are not the proper parties to question the validity of the deed of sale. The reason given is that they are not the legitimate and compulsory heirs of Paulina Baranda nor were they parties to the challenged transactions.

It is not disputed that Paulina Baranda died intestate without leaving any direct descendants or ascendants, or compulsory heirs. She was survived, however, by two brothers, namely, Pedro and Teodoro, and several nephews and nieces, including the private respondents, as well as petitioners Flocerfina Baranda, Salvacion Baranda, and Alipio Baranda Villarte, children of two deceased brothers and a sister. The above-named persons, together with Pedro Baranda, who was not joined as a petitioner because he is the father of the private respondents, and the children of another deceased sister, are the legitimate intestate heirs of Paulina Baranda.

The applicable provisions of the Civil Code are the following:

[]Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

[]Art. 1005. Should brothers and sisters survive together with nephews and nieces, who are the children of the descendant's brothers and sisters of the full blood, the former shall inherit per capita, and the latter per stirpes

[]Art. 972. The right of representation takes place in the direct descending line, but never in the ascending.

[]In the collateral line it takes place only in favor of the children or brothers or sisters, whether they be of the full or half blood.[]

As heirs, the petitioners have legal standing to challenge the deeds of sale purportedly signed by Paulina Baranda for otherwise property claimed to belong to her estate will be excluded therefrom to their prejudice. Their claims are not merely contingent or expectant, as argued by the private respondents, but are deemed to have vested in them upon Paulina Baranda's death in 1982, as, under Article 777 of the Civil Code, "the rights to the succession are transmitted from the moment of the death of the decedent." While they are not compulsory heirs, they are nonetheless legitimate heirs and so, since they "stand to be benefited or injured by the judgment or suit," are entitled to protect their share of successional rights.

This Court has repeatedly held that "the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided that there is no pending special proceeding for the settlement of the decedent's estate." [112]

In *Marquez v. Court of Appeals*, [113] the therein petitioners filed a complaint for reconveyance and partition with damages, alleging that both the Affidavit of Adjudication and Deed of Donation Inter Vivos executed by the therein private respondents were invalid as the other heirs of the decedent were excluded in the execution of the said instruments. While the issue on real party in interest was not made an issue in the said case, the ruling of the lower court was upheld by the Court, declaring that both the Affidavit of Adjudication and the Donation Inter Vivos did not produce any legal effect and did not confer any right whatsoever despite the lack of any determination in a special proceeding as to the heirship of the therein petitioners.

In the 2013 case of *Pacaña-Contreras and Pacaña v. Rovila Water Supply, Inc., et al.*, [114] which was decided around five months after *Ypon*, the therein petitioner heirs filed an action for accounting and damages against the therein respondents. The latter filed a motion to dismiss, alleging that the therein petitioners are not real parties in interest to institute and prosecute the case, just as what is alleged in the instant case. While the lower court denied the motion to dismiss, the appellate court, citing *Litam and Yaptinchay*, reversed the lower court and dismissed the case because "the (therein) petitioners should first be declared as heirs before they can be considered as the real parties in interest. This cannot be done in the present ordinary civil case but in a special proceeding for that purpose." [115] Arguing that their declaration as heirs in a special proceeding is not necessary pursuant to the Court's ruling in *Marabilles*, the therein petitioners' petition was granted by the Court which reversed and set aside the appellate court's ruling.

In 2014, the Court, through Senior Associate Justice Marvic M. V. F. Leonen (Justice Leonen), promulgated its Decision in *Heirs of Gregorio Lopez v. Development Bank of the Philippines*, [116] wherein the therein petitioners discovered that one of the heirs executed an affidavit of self-adjudication declaring himself to be the decedent's only surviving heir. The therein petitioners instituted an ordinary civil action for the nullification of the affidavit of self-adjudication. In upholding the nullification of the affidavit of self-adjudication, the Court held that the rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared "heirs":

Title or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared "heirs". Before the property is partitioned, the heirs are co-owners of the property.

In this case, the rights to Gregoria Lopez's property were automatically passed to her sons — Teodoro, Francisco, and Carlos — when she died in 1922. Since only Teodoro was survived by children, the rights to the property ultimately passed to them when Gregoria Lopez's sons died. The children entitled to the property were Gregorio, Simplicio, Severino, and Enrique.

Gregorio, Simplicio, Severino, and Enrique became co-owners of the property, with each of them entitled to an undivided portion of only a quarter of the property. Upon their deaths, their children became the co-owners of the property, who were entitled to their respective shares, such that the heirs of Gregorio became entitled to Gregorio's one-fourth share, and Simplicio's and Severino's respective heirs became entitled to their corresponding one-fourth shares in the property. The heirs cannot alienate the shares that do not belong to them. [117]

In 2017, the Court promulgated *Capablanca v. Heirs of Pedro Bas, et al.* [118] In the said case, the decedent Norberto Bas (Norberto) purchased a piece of land and took possession. Similar to the instant case, Norberto died

without a will and was succeeded by a collateral relative, i.e., his niece and only heir, Lolita Bas Capablanca (Lolita). Subsequently, Lolita learned that a TCT had been issued in the names of the therein respondents on the basis of a reconstituted Deed of Conveyance. Hence, just as in the instant case, a collateral relative, i.e., Lolita, filed a complaint before the RTC of Cebu City for the cancellation of the titles covering the property once owned by the decedent. While the RTC ruled in favor of Lolita, the appellate court reversed the RTC's ruling. The appellate court, citing the case of *Yaptinchay*, held that there is a need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property.

In reversing the ruling of the appellate court, the Court, again through Justice Leonen, emphatically held that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased:

The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs.

x x x What petitioner is pursuing is Norberto's right of ownership over the property which was passed to her upon the latter's death.

This Court has stated that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased. In *Marabilles v. Quito*:

The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself. Thus, it has been held that "[t]here is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor" [x x x] A recent case wherein this principle was maintained is *Cabuyao vs. [C]aagbay*.^[119] (Emphasis supplied)

Similar to the above-stated case, the private respondents in the instant case did not file their Complaint to establish their filiation with Rosie or apply for the determination of their right as intestate heirs, considering that the law already vested in them, as siblings of the decedent, their status as intestate heirs of Rosie. Rather, the private respondents sought to enforce their already established right over the property which had been allegedly violated by the fraudulent acts of petitioner Treyes.

In the instant Petition, petitioner Treyes argues that the cases of *Marquez v. Court of Appeals, Baranda, et al. v. Baranda, et al.*, and *Heirs of Gregorio Lopez v. Development Bank of the Philippines* find no application in the instant case because the parties in the aforesaid cases were able to present evidence as to their status as heirs and that the determination of their status as heirs was not contested.

This argument is not well taken.

In the instant case, the Court notes that in substantiating the fact that the private respondents are siblings of Rosie, and thus intestate heirs of the latter by operation of law, they attached their respective birth certificates proving that they are indeed siblings of Rosie.^[120]

Rule 132, Section 23 of the Rules states that documents consisting of entries in public records made in the

performance of a duty by a public officer are prima facie evidence of the facts therein stated.

The Court has held that a birth certificate, being a public document, offers prima facie evidence of filiation and a high degree of proof is needed to overthrow the presumption of truth contained in such public document. This is pursuant to the rule that entries in official records made in the performance of his duty by a public officer are prima facie evidence of the facts therein stated.[121]

To be sure, upon meticulous perusal of the petitioner Treyes' pleadings, it is clear that the status of the private respondents as siblings of Rosie was not even seriously refuted by him. He also does not make any allegation that the birth certificates of the private respondents are fake, spurious, or manufactured. All he says is that there must first be a declaration of the private respondents' heirship in a special proceeding. Clearly, therefore, it cannot be said in the instant case that the private respondents were not able to present evidence as to their status as heirs and that the determination of their status as heirs was seriously contested by petitioner Treyes.

In relation to the foregoing, considering that the private respondents' action is founded on their birth certificates, the genuineness and due execution of the birth certificates shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts.[122] In the instant case, the records show that there was no specific denial under oath on the part of petitioner Treyes contesting the birth certificates. Therefore, the genuineness and due execution of the subject birth certificates are deemed admitted.

Hence, despite the promulgation of Ypon, Yaptinchay, Portugal, Reyes, and other cases upholding the rule that a prior determination of heirship in a special proceeding is a prerequisite to an ordinary civil action involving heirs, such rule has not been consistently upheld and is far from being considered a doctrine. To the contrary, a plurality of decisions promulgated by both the Court En Banc[123] and its Divisions[124] firmly hold that the legal heirs of a decedent are the parties in interest to commence ordinary civil actions arising out of their rights of succession, without the need for a separate prior judicial declaration of their heirship, provided only that there is no pending special proceeding for the settlement of the decedent's estate.

As similarly viewed by Justice Bernabe, the "more recent strand of jurisprudence correctly recognize the legal effects of Article 777 of the Civil Code, and thus, adequately provide for remedies for the heirs to protect their successional rights over the estate of the decedent even prior to the institution of a special proceeding for its settlement"[125]

By this Decision now, the Court so holds, and firmly clarifies, that the latter formulation is the doctrine which is more in line with substantive law, i.e., Article 777 of the Civil Code is clear and unmistakable in stating that the rights of the succession are transmitted from the moment of the death of the decedent even prior to any judicial determination of heirship. As a substantive law, its breadth and coverage cannot be restricted or diminished by a simple rule in the Rules.

To be sure, the Court stresses anew that rules of procedure must always yield to substantive law.[126] The Rules are not meant to subvert or override substantive law. On the contrary, procedural rules are meant to operationalize and effectuate substantive law.

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

Indeed, the Rules shall always be construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.[127]

Hence, it would be highly inimical to the very purpose of the Rules to dispose of matters without the unnecessary and circuitous procedures created by a misreading of the requirements of said Rules, i.e, they still require a separate and lengthy special proceeding for the solitary purpose of establishing the private respondents' status as legal heirs of Rosie, when their heirship has already been deemed established by virtue of civil law, with petitioner Treyes not seriously and substantially refuting that the private respondents are siblings of the decedent. If the Court will subscribe to petitioner Treyes' arguments and grant the instant Petition, it would sanction superfluity and redundancy in procedure. To accept petitioner Treyes' stance will necessarily mean that, moving forward, heirs will not even be able to extra-judicially and summarily settle the estate of a decedent without a prior judicial declaration of heirship in a special proceeding. Ironically, even petitioner Treyes' Affidavits of Self-Adjudication would be legally baseless as he himself has not previously established in a prior special proceeding his status as the husband and heir of Rosie.

Recapitulation

Given the clear dictates of the Civil Code that the rights of the heirs to the inheritance vest immediately at the precise moment of the decedent's death even without judicial declaration of heirship, and the various Court En Banc and Division decisions holding that no prior judicial declaration of heirship is necessary before an heir can file an ordinary civil action to enforce ownership rights acquired by virtue of succession through the nullification of deeds divesting property or properties forming part of the estate and reconveyance thereof to the estate or for the common benefit of the heirs of the decedent, the Court hereby resolves to clarify the prevailing doctrine.

Accordingly, the rule laid down in *Ypon, Yaptinchay, Portugal, Reyes, Heirs of Gabatan v. Court of Appeals*, and other similar cases, which requires a prior determination of heirship in a separate special proceeding as a prerequisite before one can file an ordinary civil action to enforce ownership rights acquired by virtue of succession, is abandoned.

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

Therefore, the Court is in total agreement with the CA that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner Treyes' second Motion to Dismiss.

WHEREFORE, premises considered, the instant Petition for Review on Certiorari under Rule 45 is hereby DENIED. The Decision dated August 18, 2016 and Resolution dated June 1, 2017 promulgated by the Court of Appeals, Cebu City, Nineteenth Division in CA-G.R. SP Case No. 08813 are hereby AFFIRMED.

SO ORDERED.

Peralta, C.J., I join the dissenting opinion of J. Gesmundo.

J. Reyes, Jr., Carandang, Lazaro-Javier, Inting, Lopez, and Gaerlan, JJ., concur.

Perlas-Bernabe, J., Please see Separate Concurring Opinion.

Leonen, J., with respect, see dissenting opinion.
Gesmundo, J., Please see dissenting opinion.
Hernando, J., I join the Dissent of Justice Gesmundo.
Zalameda, J., Please see Concurring Opinion.
Delos Santos, J., No part.
Baltazar-Padilla, J., On leave.

[1] Art. 1001, CIVIL CODE.

[2] Art. 777, CIVIL CODE.

[3] Rollo, pp. 15-55.

[4] Id. at 214-219. Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Geraldine C. Fiel-Macaraig.

[5] Id. at 223-225.

[6] Nineteenth Division.

[7] Rollo, pp. 288-290.

[8] Id. at 317.

[9] Id. at 19; see Certificate of Death dated May 2, 2008, id. at 253.

[10] Id.

[11] Covered by Transfer Certificates of Title (TCT) Nos. T-249139, T-554522, M-43623, T-18709, T-18698, T-18699, T-18700, T-18701, T-18757, T-18758, T-18759, T-18760, T-18761, and T-627723; id. at 90-93.

[12] Id. at 270-280.

[13] Id. at 282-287.

[14] Id. at 278, 286.

[15] Id. at 235.

[16] Id.

[17] Id.

[18] Id. at 228-241.

[19] Id. at 238-239.

[20] Supra note 9.

[21] Id. at 19-20.

[22] Id. at 20.

[23] Id. at 227.

[24] Id. at 20.

[25] Id. at 242-252.

[26] Supra note 7.

[27] Id. at 289. Emphasis supplied.

[28] Id. at 291-305.

[29] Id. at 306-309.

[30] Id. at 310-316.

[31] Supra note 8.

[32] Id. at 56-82.

[33] Id. at 218.

[34] Id. at 318-334.

[35] Supra note 5.

[36] Id. at 342-358.

[37] Id. at 389-404.

[38] SECTION. 1. Where estate of deceased person settled. – If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

[39] Rollo, p. 16.

[40] SECTION 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;
- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with, (1a)

[41] Supra note 21.

[42] Rule 14, Sec. 20, RULES OF COURT, provides:

SEC. 20. Voluntary appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (23a)

[43] *Ernesto Oppen, Inc. v. Compas*, G.R. No. 203969, October 21, 2015, 773 SCRA 546, 557.

[44] SEC. 4. Liability of distributees and estate. – If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made.

[45] See Rule 72, Sec. 1, RULES OF COURT.

[46] *Supra* note 5.

[47] 104 Phil. 70 (1958).

[48] Art. 1441, CIVIL CODE.

[49] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, Revised 2nd ed. 1983, Vol. IV, p. 673.

[50] *Id.* at 674.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] See *Philippine National Bank v. Court of Appeals*, G.R. No. 97995, January 21, 1993, 217 SCRA 347.

[55] G.R. No. 125715, December 29, 1998, 300 SCRA 653.

[56] *Id.* at 658.

[57] *Id.* Emphasis and underscoring supplied.

[58] *Lopez v. Court of Appeals*, G.R. No. 157784, December 16, 2008, 574 SCRA 26, 39.

[59] *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 705.

[60] *Supra* note 7.

[61] Section 19, Batas Pambansa Blg. 129 (The Judiciary Reorganization Act of 1980).

[62] G.R. No. 198680, July 8, 2013, 700 SCRA 778.

- [63] G.R. No. 124320, March 2, 1999, 304 SCRA 18.
- [64] G.R. No. 155555, August 16, 2005, 467 SCRA 184.
- [65] G.R. No. 162956, April 10, 2008, 551 SCRA 86.
- [66] Heirs of Ypon v. Ricaforte, *supra* note 62 at 784-785. Emphasis, underscoring, and citations omitted.
- [67] *Id.* at 786.
- [68] 42 Phil. 880 (1920).
- [69] *Id.* at 882.
- [70] *Id.*
- [71] G.R. Nos. 109373 & 112991, March 20, 1995, 242 SCRA 492.
- [72] *Id.* at 503.
- [73] Rule 1, Sec. 3(a), RULES OF COURT.
- [74] Pacific Banking Corp. Employees Organization v. Court of Appeals, *supra* note 71 at 503.
- [75] Muñoz v. Yabut, Jr., G.R. Nos. 142676 & 146718, June 6, 2011, 650 SCRA 344, 367.
- [76] *Id.*
- [77] *Id.*
- [78] Ruben F. Balane, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION), 2010 ed., p. 35.
- [79] Heirs of Gregorio Lopez v. Development Bank of the Philippines, G.R. No. 193551, November 19, 2014, 741 SCRA 153, 163 citing Bonilla, et al. v. Barcena, et al., G.R. No. L-41715, June 18, 1976, 71 SCRA 491.
- [80] Bonilla, et al. v. Barcena, et al., *supra* note 79.
- [81] *Id.* at 495. Emphasis and underscoring supplied.
- [82] Heirs of Gregorio Lopez v. Development Bank of the Philippines, *supra* note 79 at 163.
- [83] Rule 74, Sec 1, RULES OF COURT.
- [84] Separate Opinion of Justice Bernabe, p. 7.
- [85] 100 Phil. 364 (1956).
- [86] *Id.* at 360.
- [87] *Id.* at 378.
- [88] 67 Phil. 213 (1939).
- [89] *Id.* at 213-214. Emphasis and underscoring supplied.
- [90] 14 Phil. 194 (1909).
- [91] 45 Phil. 430 (1923).
- [92] 59 Phil. 486 (1934).

- [93] 63 Phil. 93 (1934).
- [94] Article VIII, Section 4(3), 1987 CONSTITUTION.
- [95] 95 Phil. 614 (1954).
- [96] *Id.* at 616.
- [97] *Id.* at 620. Emphasis supplied.
- [98] *Id.* Emphasis supplied.
- [99] 97 Phil. 762 (1955).
- [100] *Id.* at 765.
- [101] 100 Phil. 64 (1956).
- [102] *Id.* at 65.
- [103] *Id.* at 66-67. Emphasis and underscoring supplied.
- [104] 98 Phil. 677 (1956).
- [105] *Id.* at 678-679. Emphasis and underscoring supplied.
- [106] G.R. No. L-28394, November 26, 1970, 36 SCRA 104.
- [107] *Id.* at 107.
- [108] *Id.* at 107-108.
- [109] *Supra* note 79.
- [110] *Id.* 495. Emphasis and underscoring supplied.
- [111] G.R. No. 73275, May 20, 1987, 150 SCRA 59.
- [112] *Id.* Emphasis and underscoring supplied.
- [113] *Supra* note 55.
- [114] G.R. No. 168979, December 2, 2013, 711 SCRA 219.
- [115] *Id.* at 227.
- [116] *Supra* note 79.
- [117] *Id.* at 163-164.
- [118] G.R. No. 224144, June 28, 2017, 828 SCRA 482. Emphasis and underscoring supplied.
- [119] *Id.* at 492-493. Underscoring supplied; emphasis in the original.
- [120] Rollo, pp. 89-90.
- [121] Sayson, et al. v. Court of Appeals, et al., G.R. Nos. 89224-25, January 23, 1992, 205 SCRA 321, 328.
- [122] Rule 8, Sec. 8, RULES OF COURT.
- [123] See De Vera, et al. v. Galauran, *supra* note 88; Cabuyao v. Caagbay, et al., *supra* note 95; Atun et al. v.

Núñez, *supra* note 99; and Marabilles, et al. v. Sps. Quito, *supra* note 101.

[124] See Morales, et al. v. Yañez, *supra* note 104; Gayon v. Gayon, *supra* note 106; Bonilla, et al. v. Barcena, et al., *supra* note 79; Baranda, et al v. Baranda, et al., *supra* note 111; Marquez v. Court of Appeals, *supra* note 55; Pacaña-Contreras and Pacaña v. Rovila Water Supply, Inc., et al., *supra* note 114.; Heirs of Gregorio Lopez v. Development Bank of the Philippines, *supra* note 79; and Capablanca v. Heirs of Pedro Bas, et al., *supra* note at 118.

[125] Separate Opinion of Justice Bernabe, p. 7. Emphasis and italics in the original.

[126] Padunan v. Department of Agrarian Reform Adjudication Board, G.R. No. 132163, January 28, 2003, 396 SCRA 196, 204.

[127] Rule 1, Sec. 6, RULES OF COURT.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

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

This case stemmed from a Complaint^[2] filed before the RTC by respondents Antonio L. Larlar, et al. (respondents) against petitioner. The nature of the actions/s may be seen from the four (4) reliefs prayed for in the Complaint as follows:

FIRST ITEM OF RELIEF

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

SECOND ITEM OF RELIEF

(Reconveyance)

THIRD ITEM OF RELIEF

(Partition)

FOURTH ITEM OF RELIEF

(Damages)^[3]

In their Complaint, respondents alleged that: (a) petitioner is the surviving spouse of the decedent, Rosie Larlar Treyes (Rosie), while respondents are the siblings of the latter; (b) in gross bad faith and with malicious intent, petitioner executed Affidavits of Self-Adjudication arrogating upon himself Rosie's properties as her "sole" heir, thereby obtaining certificates of title thereto; and (c) petitioner's execution of such documents prejudiced respondents, considering that under Article 1001^[4] of the Civil Code, they are also considered heirs of Rosie, and as such, are legally entitled to share in her estate. Hence, respondents prayed for the following:

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

a)

Declaring the Affidavits of Self-Adjudication dated September 2, 2008 (Annex "X") and May 19, 2011 (Annex

"Y") as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;

b)

Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;

c)

Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;

d)

Ordering the defendant to pay plaintiffs moral damages of not less than P500,000.00 and exemplary damages of not less than P500,000.00[; and]

e)

Ordering the defendant to pay plaintiffs attorney's fees of P200,000.00 and litigation expenses of not less than P150,000.00.

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

Initially, petitioner moved for the dismissal of the case (first motion to dismiss) on the ground of lack of jurisdiction over his person. After due proceedings, the RTC corrected such defect by re-issuing summons together with the complaint which was duly served on petitioner. Thereafter, petitioner filed another Motion to Dismiss[6] (second motion to dismiss), this time, specifically invoking three (3) grounds, namely, lack of jurisdiction over the subject matter of the claim; improper venue; and prescription. In a Resolution[7] dated July 15, 2014, the RTC denied the motion for lack of merit, but nonetheless recognized that it had no jurisdiction over the third cause of action in the Complaint which is partition:

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

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

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

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

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

case.

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

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

Petitioner moved for reconsideration[9] which was denied in an Order[10] dated August 27, 2014. Aggrieved, petitioner filed a petition for certiorari before the CA. In a Decision[11] dated August 18, 2016, the CA affirmed the questioned RTC issuances, holding, among others, that:

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

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

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

Undaunted, petitioner filed a motion for reconsideration. In a Resolution[13] dated June 1, 2017, the CA denied the motion, holding, inter alia, that "[p]rivate [r]espondents were automatically vested with the right to inherit from Mrs. Treyes the moment she died without a will. Title or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared 'heirs.'"[14]

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

Unsatisfied still, petitioner filed the instant petition.[15]

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

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

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

The final ground raised in the second motion to dismiss is lack of jurisdiction over the subject matter. In this regard, petitioner contends that respondents' primary goal in filing the complaint is to have them declared as Rosie's legal heirs, a subject matter which must be properly threshed out in a special proceeding and not in an ordinary civil action such as respondents' complaint.[20] In support of such contention, petitioner cites the cases of *Litam v. Rivera*,[21] *Heirs of Yaptinchay v. Del Rosario*,[22] *Portugal v. Portugal-Beltran*,[23] *Reyes v. Enriquez*,[24] and *Heirs of Ypon v. Ricaforte*[25] (Ypon) all of which essentially instruct that "the status of a [person] who claim[s] to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action"[26] and that the "[d]etermination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property." [27] Given the foregoing, petitioner asserts that since an ordinary court has no power to declare as to who are the true heirs of a decedent, then the RTC should have dismissed the case on the ground of lack of jurisdiction over the subject matter.[28] Corollary thereto, petitioner further argues that absent a formal declaration of heirship in favor of respondents, they have no legal standing to file the instant suit. He, thus, posits, that it is only after respondents obtain such a declaration in their favor that they can file the instant case in pursuance of their successional shares in Rosie's estate.[29]

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

Respondents' assertions are meritorious.

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

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

For better perspective, these more recent cases echo case law which instructs that "[p]ending the filing of administration proceedings, the heirs without doubt have legal personality to bring suit in behalf of the estate of the decedent in accordance with the provision of Article 777 of the [Civil Code] x x x [; which] in turn is the foundation of the principle that the property, rights and obligations to the extent and value of the inheritance of a

person are transmitted through his death to another or others by his will or by operation of law." [34] As I see it, this more recent strand of jurisprudence correctly recognizes the legal effects of Article 777 of the Civil Code, and thus, adequately provides for remedies for the heirs to protect their successional rights over the estate of the decedent even prior to the institution of a special proceeding for its settlement. Thus, despite the absence of said special proceeding, an ordinary civil action for the purpose of protecting their legal interest in the estate may be availed of by the putative heirs. In this regard, they are merely asserting their successional rights, which are transmitted to them from the moment of the decedent's death.

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

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

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

At this point, it is well to recognize that in these ordinary civil actions aimed merely to protect the interest of the heirs so that the properties in dispute may properly revert to the estate, the court (unlike in this case where heirship is not at issue) might have to tackle the issue of heirship so as to determine whether or not: (a) the plaintiff/defendant-heirs are real parties-in-interest to the suit; and (b) they are entitled to the reliefs sought. The court is competent to pass upon these matters but it must be stressed that any discussion that touches upon the issue of heirship should be made only "in relation to the cause of action of the ordinary civil action" [36] and for the limited purpose of resolving the issue/s therein, and such finding would not operate to bar the parties from raising the same issue of heirship in the appropriate forum, i.e., special proceedings. As such, any declaration of heirship made in an ordinary civil action to recover property should only be deemed as provisional to the extent that it is necessary to determine who between the parties has the better right to possess/own the same. This provisional approach is similarly observed in ejectment cases where the issue of ownership may be passed upon for the limited purpose of resolving who has the right to possess the property. [37]

Furthermore, and at the risk of belaboring the point, in such ordinary civil actions, the court's ruling, if in favor of the heirs, should be limited to the reversion of the property/ies in litigation back to the estate of the decedent. Verily, as the courts a quo have herein recognized, the court cannot, as a general rule, order the partition of the property/ies of the decedent and distribute it/them among the heirs, because the court simply has no jurisdiction to do so in this ordinary civil action. In this relation, a special proceeding for the settlement of estate is necessary to not only definitively determine who are the true and lawful heirs to which specific portions of the estate may be distributed, but also, even prior thereto, to first pay off the claims against the estate, which is essential to ascertain the net estate to be distributed. Note, however, that, as an exception, the heirs may avail of an "ordinary action for partition" but only pursuant to the special conditions under Section 1, Rule 74 [38] of the Rules of Court, namely, that: (a) the decedent left no will and no debts; (b) the heirs are all of age or the minor heirs are represented by their respective guardians; (c) the agreement or adjudication is made by means of a public instrument duly filed

with the Register of Deeds; (d) the parties thereto shall, simultaneously with and as a condition precedent to the filing of the public instrument, file a bond; and (e) the fact of settlement shall be published in a newspaper of general circulation.

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

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

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

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

ACCORDINGLY, I vote to DENY the petition.

[1] Rollo, pp. 15-55.

[2] *Id.* at 228-241.

[3] See ponencia, p. 3.

[4] Article 1001 of the CIVIL CODE reads:

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

[5] Rollo, pp. 238-239.

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

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

[8] *Id.* at 83-84.

- [9] See Omnibus Motion to Reconsider Resolution dated 15 July 2014 and to Defer Filing of Answer dated July 28, 2014; *id.* at 147-161.
- [10] *Id.* at 86.
- [11] *Id.* at 214-219. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Geraldine C. Fiel-Macaraig, concurring.
- [12] *Id.* at 217.
- [13] *Id.* at 223-225.
- [14] *Id.* at 224.
- [15] *Id.* at 15-52.
- [16] *Id.* at 84.
- [17] See ponencia, pp. 6-7.
- [18] Section 1, Rule 9, RULES OF COURT.
- [19] See ponencia, pp. 8-10.
- [20] See rollo, p. 216.
- [21] 100 Phil. 364, 378 (1956).
- [22] 363 Phil. 393 (1999).
- [23] 504 Phil. 456 (2005).
- [24] 574 Phil. 2445 (2008).
- [25] 713 Phil. 570 (2013).
- [26] *Heirs of Gabatan v. CA*, 600 Phil. 112, 125 (2009), citing *Agapay v. Palang*, 342 Phil. 302, 313 (1997).
- [27] *Ypon*, *supra* at 576.
- [28] See rollo, pp. 24-38.
- [29] See *id.* at 38-39.
- [30] See *id.* at 347.
- [31] 747 Phil. 427 (2014).
- [32] 811 Phil. 861 (2017).
- [33] See ponencia, p. 28.
- [34] *Rioferio v. Court of Appeals*, 464 Phil. 67 (2004).
- [35] Rollo, p. 217.
- [36] Ponencia, p. 30; emphasis supplied.
- [37] See *Spouses Marcos R. Esmaquel and Victoria Sordevilla v. Coprada*, 653 Phil. 96 (2010).

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

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

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

[39] Rollo, p. 84.

DISSENTING OPINION

LEONEN, J.:

It is well established that special proceedings have different procedural requirements from those of ordinary civil actions. Ordinary civil actions, whether they be actions in personam or quasi in rem, are binding only upon the parties. On the other hand, special proceedings, such as the settlement of a decedent's estate, are actions in rem—they entail a binding effect on the whole world.

Estate settlements and declarations of heirship, to be binding on the whole world, must undergo any of these: (1) an extrajudicial settlement pursuant to Rule 74, Section 4 of the Rules of Court; (2) a judicial summary settlement; or (3) testate or intestate settlement of estate. If none of these remedies are utilized, there could be no declaration of heirs. This rule is long entrenched in jurisprudence, and must likewise govern here.

This case centers on the estate of Rosie Larlar Treyes (Rosie), whose death left her husband, petitioner Nixon L. Treyes, and her siblings (private respondents) embroiled over the heirship to her 14 properties. Petitioner executed two Affidavits of Self-Adjudication, transferring the entire estate to himself as Rosie's sole heir—one that Rosie's siblings contested as they, too, claim to be compulsory heirs.

For the majority, the Court of Appeals correctly held that the Regional Trial Court did not gravely abuse its discretion in denying petitioner's second Motion to Dismiss private respondents' Complaint, where he cited the following grounds: (a) improper venue; (b) prescription, and (c) lack of jurisdiction over the subject matter. The majority maintained that none of these grounds were proper.

I dissent.

I

Under the Omnibus Motion Rule, as provided in Rule 15, Section 8 of the Rules of Court, every motion that attacks a pleading, judgment, order, or proceeding shall include all grounds then available. All objections not included shall be deemed waived, unless the grounds are the lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription.

Since petitioner failed to raise the ground of improper venue in his first Motion to Dismiss, he could not have raised the ground of improper venue in his second Motion to Dismiss, as that has been deemed waived. Nevertheless, the grounds of prescription and lack of jurisdiction over the subject matter may still be belatedly presented.

In asserting that private respondents' action had already prescribed, petitioner depended on Rule 74, Section 4 of the Rules of Court. The provision states that an heir or other persons unduly deprived of lawful participation in the estate "may compel the settlement of the estate in the courts" within two years after the estate settlement and distribution.

However, the majority states that Rule 74 applies only to special proceedings. Since private respondents' Complaint is an ordinary civil action and not a special proceeding, petitioner's assertion on the prescriptive period will not apply.[1]

The case being a civil action, the majority likewise believes that the ground of lack of jurisdiction is misplaced. Refuting petitioner's claim, it states that jurisdiction over the subject matter is conferred by law and determined by the allegations in a complaint. The law, it continues, confers jurisdiction on the Regional Trial Court for civil actions involving title or possession of real property, or any interest therein, where the property's assessed value exceeds P20,000.00 or, for civil actions in Metro Manila, P50,000.00; and if the action is not for forcible entry or unlawful detainer.[2] Since private respondents sought to annul the Affidavits of Self-Adjudication, the majority held that the trial court correctly assumed jurisdiction over the case.[3]

It is true that jurisdiction over the subject matter is conferred by law and determined by the allegations made in the complaint. In *Morta, Sr. v. Occidental*:[4]

It is axiomatic that what determines the nature of an action as well as which court has jurisdiction over it, are the allegations in the complaint and the character of the relief sought. "Jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether the plaintiff is entitled to recover upon a claim asserted therein — a matter resolved only after and as a result of the trial. Neither can the jurisdiction of the court be made to depend upon the defenses made by the defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant." [5] (Citations omitted)

A review of the Complaint's allegations reveals that private respondents unambiguously claim to be entitled to half of Rosie's estate as compulsory heirs under Article 1001 of the Civil Code. Thus, they pray that the Affidavits of Self-Adjudication be annulled and the estate be distributed and partitioned. They further assert that petitioner fraudulently excluded them from the extrajudicial settlement to take hold of their conjugal properties for himself. They state:

1.6 Plaintiffs sister, ROSIE LARLAR TREYES, died without leaving any will. She also did not bear any children with the defendant TREYES.

1.7. Accordingly, the estate of ROSIE LARLAR TREYES, which consists of her one-half (1/2) share in the conjugal properties that she owns with her husband (defendant TREYES), became subject to the operation of

the law on intestate succession.

1.8. In particular, Article 1001 of the Civil Code of the Philippines provides that where there are brothers and sisters who survive together with the widow or widower of the deceased, one-half (1/2) of the decedent's estate shall belong to the widow or widower, while the other half shall belong to the surviving brothers and sister. Thus:

....

1.9. In effect, plaintiffs are legally the co-heirs of the estate of ROSIE LARLAR TREYES together with the defendant and are entitled to a share in the same.

1.10. However, in gross bad faith and with malicious intent, defendant TREYES falsely and fraudulently caused the above-described properties to be transferred in his own name to the exclusion of the herein plaintiffs by executing two (2) Affidavits of Self-Adjudication, the first one dated September 2, 2008 (copy attached as Annex "X"), while the second one is dated May 19, 2011 (copy hereto attached as Annex "Y"). The contents of both Affidavits of Self-Adjudication are practically identical, and only the dates appear to vary.[6]

From their allegations, it is evident that the annulment of petitioner's Affidavits of Self-Adjudication, the cancellation of the Transfer Certificates of Title, may only be had if private respondents would be established as heirs. Only after being declared heirs can they be entitled to a portion of Rosie's estate.

Estate settlements are special proceedings cognizable by a probate court of limited jurisdiction, while the annulment of affidavits of adjudication and transfer certificates of title are ordinary civil actions cognizable by a court of general jurisdiction. It only follows that the trial court would be exceeding its jurisdiction if it entertained the issue of heirship. The subject matter and relief sought should have been threshed out in a special proceeding, and not in an ordinary civil action.

Yet, the majority emphasizes that the Complaint was not to establish heirship, but to annul the Affidavits of Self-Adjudication and Transfer Certificates of Title due to fraud. Thus, it rules that both Motions to Dismiss of petitioner were rightly struck down.

I disagree. Certain clarifications regarding the declaration of heirship in special proceedings as opposed to in ordinary civil actions must be made so as not to espouse confusion.

In *Heirs of Ypon v. Ricaforte*,^[7] this Court laid down the distinction between an ordinary civil action and a special proceeding. It categorically stated that the determination of a decedent's lawful heirs should be made in a special proceeding:

In the case of *Heirs of Teofilo Gabatan v. CA*, the Court, citing several other precedents, held that the determination of who are the decedent's lawful heirs must be made in the proper special proceeding for such purpose, and not in an ordinary suit for recovery of ownership and/or possession, as in this case:

Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that 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.[8] (Emphasis in the original, citation omitted)

The majority is correct in saying that the main difference between an ordinary civil action and a special proceeding is that in an ordinary civil action, parties sue for the enforcement or protection of a right to which they claim entitlement, while in a special proceeding, parties merely seek to have a right established in their favor. However, this is not the only distinction between the two.

Special proceedings have different procedural requirements from ordinary civil actions. Necessarily, a question made for a special proceeding cannot be threshed out in a civil action, since a judgment from a special proceeding would have a different effect from that of an ordinary civil action.

In *Natcher v. Court of Appeals*,^[9] widow Graciano Del Rosario (Del Rosario) married Patricia Natcher (Natcher) and transferred one of his lots to her through a sale. Upon Del Rosario's death, his children from his first marriage sought to annul the Deed of Sale in Natcher's favor on the ground of fraud. The trial court held the sale to be illegal; nevertheless, it considered the lot as part of Natcher's advanced inheritance as a compulsory heir of Del Rosario's estate.

This Court reversed the trial court's ruling, holding that matters of settlement and distribution of the decedent's estate fall within the exclusive province of the probate court, in its limited jurisdiction, and may not be concluded in an ordinary civil action. Thus:

As could be gleaned from the foregoing, there lies a marked distinction between an action and a special proceeding. An action is a formal demand of one's right in a court of justice in the manner prescribed by the court or by the law. It is the method of applying legal remedies according to definite established rules. The term "special proceeding" may be defined as an application or proceeding to establish the status or right of a party, or a particular fact. Usually, in special proceedings, no formal pleadings are required unless the statute expressly so provides. In special proceedings, the remedy is granted generally upon an application or motion."

Citing American Jurisprudence, a noted authority in Remedial Law expounds further:

"It may accordingly be stated generally that actions include those proceedings which are instituted and prosecuted according to the ordinary rules and provisions relating to actions at law or suits in equity, and that special proceedings include those proceedings which are not ordinary in this sense, but is instituted and prosecuted according to some special mode as in the case of proceedings commenced without summons and prosecuted without regular pleadings, which are characteristics of ordinary actions. . . . A special proceeding must therefore be in the nature of a distinct and independent proceeding for particular relief, such as may be instituted independently of a pending action, by petition or motion upon notice."

Applying these principles, an action for reconveyance and annulment of title with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding, which concomitantly requires the application of specific rules as provided for in the Rules of Court.

Clearly, matters which involve settlement and distribution of the estate of the decedent fall within the exclusive province of the probate court in the exercise of its limited jurisdiction.

Thus, under Section 2, Rule 90 of the Rules of Court, questions as to advancement made or alleged to have been made by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the final order of the court thereon shall be binding on the person raising the questions and on the heir.

While it may be true that the Rules used the word "may", it is nevertheless clear that the same provision contemplates a probate court when it speaks of the "court having jurisdiction of the estate proceedings".

Corollarily, the Regional Trial Court in the instant case, acting in its general jurisdiction, is devoid of authority to

render an adjudication and resolve the issue of advancement of the real property in favor of herein petitioner Natcher, inasmuch as Civil Case No. 71075 for reconveyance and annulment of title with damages is not, to our mind, the proper vehicle to thresh out said question. Moreover, under the present circumstances, the RTC of Manila, Branch 55 was not properly constituted as a probate court so as to validly pass upon the question of advancement made by the decedent Graciano Del Rosario to his wife, herein petitioner Natcher.[10] (Emphasis supplied, citations omitted)

More important, ordinary civil actions are proceedings quasi in rem, which means they are binding only to the parties involved. Meanwhile, special proceedings, including estate settlement, are proceedings in rem, binding the whole world. This was enunciated in *Leriu v. Longa*[11] thus:

The Court in *Pilapil* adjudged:

While it is true that since the CFI was not informed that Maximino still had surviving siblings and so the court was not able to order that these siblings be given personal notices of the intestate proceedings, it should be borne in mind that the settlement of estate, whether testate or intestate, is a proceeding in rem, and that the publication in the newspapers of the filing of the application and of the date set for the hearing of the same, in the manner prescribed by law, is a notice to the whole world of the existence of the proceedings and of the hearing on the date and time indicated in the publication. The publication requirement of the notice in newspapers is precisely for the purpose of informing all interested parties in the estate of the deceased of the existence of the settlement proceedings, most especially those who were not named as heirs or creditors in the petition, regardless of whether such omission was voluntarily or involuntarily made....[12] (Emphasis in the original)

An action in rem was further explained in *De Pedro v. Romas an Development Corporation*[13] vis-à-vis quasi in rem and in personam actions:

In actions in personam, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions in personam because they seek to impose personal responsibility or liability upon a person.

Courts need not acquire jurisdiction over parties on this basis in in rem and quasi in rem actions. Actions in rem or quasi in rem are not directed against the person based on his or her personal liability.

Actions in rem are actions against the thing itself. They are binding upon the whole world. Quasi in rem actions are actions involving the status of a property over which a party has interest. Quasi in rem actions are not binding upon the whole world. They affect only the interests of the particular parties.

However, to satisfy the requirements of due process, jurisdiction over the parties in in rem and quasi in rem actions is required.

The phrase, "against the thing," to describe in rem actions is a metaphor. It is not the "thing " that is the party to an in rem action; only legal or natural persons may be parties even in in rem actions. "Against the thing" means that resolution of the case affects interests of others whether direct or indirect. It also assumes that the interests — in the form of rights and duties — attach to the thing which is the subject matter of litigation. In actions in rem, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.[14] (Emphasis supplied, citations omitted)

To illustrate: if an in rem action such as a succession proceeding were to declare heirship, this would be binding on the whole world, and would generally bar any third party from questioning such declaration. However, if an ordinary civil action—which is binding only on the parties involved—resolves causes of action that incidentally determine the question of heirship, any third party may simply assail that determination later on.

Thus, I do not agree that it is no longer necessary to go through a special proceeding to declare one's status as an

heir, even if such declaration is merely incidental to the purpose of the ordinary civil action. There are only three (3) ways in which one may establish heirship, namely: (1) an extrajudicial settlement under Rule 74, Section 4[15] of the Rules of Court; (2) a judicial summary settlement; and (3) a settlement of estate through testate or intestate. If none of these remedies are utilized, there could be no declaration of heirs.

Granted, private respondents may be Rosie's heirs pursuant to Article 777 of the Civil Code, but this does not give the Regional Trial Court, in its ordinary jurisdiction, the authority to declare them as heirs.

Still, the majority highlights the exceptions to the rule that a determination of heirship in a special proceeding is a prerequisite to an ordinary civil action involving heirs, namely: (1) "when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship"; and (2) when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened." [16] Evidently, neither of the exceptions applies.

In *Rebusquillo v. Spouses Gualvez*, [17] where an affidavit of adjudication was likewise questioned in an ordinary civil action for not including all the heirs, this Court said that the declaration of heirship must be made in a special proceeding, but allowed room for exceptions. Citing *Portugal v. Portugal-Beltran*, [18] it said:

It has indeed been ruled that the declaration of heirship must be made in a special proceeding, not in an independent civil action. However, this Court had likewise held that recourse to administration proceedings to determine who heirs are is sanctioned only if there is a good and compelling reason for such recourse. Hence, the Court had allowed exceptions to the rule requiring administration proceedings as when the parties in the civil case already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment upon the issues it defined during the pre-trial. In *Portugal v. Portugal-Beltran*, this Court held:

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 1 of the Revised Rules of Court. Said rule is an exception to the general rule that when a person dies leaving a 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.

Petitioners claim, however, to be the exclusive heirs of Portugal. A probate or intestate court, no doubt, has jurisdiction to declare who are the heirs of a deceased.

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 proceeding. 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.

....

Similar to *Portugal*, in the present case, there appears to be only one parcel of land being claimed by the contending parties as the inheritance from Eulalio. It would be more practical, as *Portugal* teaches, to dispense with a separate special proceeding for the determination of the status of petitioner Avelina as sole heir of Eulalio, especially in light of the fact that respondents spouses Gualvez admitted in court that they knew for a fact that petitioner Avelina was not the sole heir of Eulalio and that petitioner Salvador was one of the other living heirs with rights over the subject land. [19] (Emphasis supplied, citations omitted)

In *Rebusquillo and Portugal*, this Court allowed the determination of heirship in an ordinary civil action since both cases involved only one property. Moreover, the parties there had already presented sufficient evidence before the court on their status as heirs, which was admitted by the opposing parties.

The same cannot be said in this case. Here, 14 conjugal properties of petitioner and the decedent are involved. In addition, the only evidence presented in court were photocopies of private respondents' birth certificates attached to the Complaint. Consequently, the exception allowing the trial court to assume jurisdiction over the case will not lie.

II

The majority went into an exhaustive explanation that ultimately concluded that private respondents are indeed heirs of Rosie. In arriving at this, it reviewed a flurry of cases that led it to abandon the long-established rule that a prior determination of heirship in a separate special proceeding is required before one can invoke their status and rights as a legal heir in an ordinary civil action.

However, the majority spoke of a line of cases that do not fall squarely upon this case.

In *Litam v. Espiritu*,^[20] this Court unequivocally stated that the Regional Trial Court erred when it declared that the party involved was not an heir of the deceased. It stated:

Likewise, we are of the opinion that the lower court should not have declared, in the decision appealed from, that Marcosa Rivera is the only heir of the decedent, such declaration is improper in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceeding 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.^[21]

Despite this clear pronouncement, the majority believes that a definite declaration of who the heirs are may be correctly made in an ordinary civil action as long as there is no special proceeding yet.

It is true that in the earlier cases of *De Vera v. Galauran*,^[22] *Cabuyao v. Caagbay*^[23] and *Marabilles v. Spouses Quito*,^[24] this Court held that heirs may assert their rights to the decedent's property without a previous judicial declaration of heirship. However, such pronouncement does not necessarily declare one's status as an heir in the same proceeding. Nor does it mean that a special proceeding can be dispensed with.

In *Morales v. Yañez*,^[25] this Court held that while a hereditary right may be protected, its formal declaration must still undergo special proceedings:

It is clear that His Honor read the law correctly. Appellants contend, however, that for defendant to acquire a vested right to Eugenio's property, he must first commence proceedings to settle Eugenio's estate — which he had not done. There is no merit to the contention. This Court has repeatedly held that the right of heirs to the property of the deceased is vested from the moment of death. Of course the formal declaration or recognition or enforcement of such right needs judicial confirmation in proper proceedings. But we have often enforced or protected such rights from encroachments made or attempted before the judicial declaration. Which can only mean that the heir acquired hereditary rights even before judicial declaration in testate or intestate proceedings.^[26]

Stated differently, even if one has not been declared an heir in a special proceeding, courts may still protect them from anyone who may encroach on the decedent's property. Based on the evidence presented in a particular case, the ordinary civil action may prosper, and whether one is the owner of a certain property may be determined. The court then decides on ownership, not heirship. Whether one is deemed the rightful owner does not make one an heir. That determination is only proper in a special proceeding.

The majority likewise used *Bonilla v. Barcena*[27] to support its theory. In that case, this Court reversed the lower court's ruling and held that the heirs' rights to the decedent's property vests in them even before a judicial declaration of heirship in a special proceeding. In that case, however, this Court did not dispense with the declaration of heirs in a separate special proceeding. Instead, it simply allowed the substitution of the decedent's children as plaintiff in the pending case, them having the legal standing to protect the decedent's rights to the property involved.

The same principle was reiterated in *Baranda v. Baranda*,[28] where it was held that heirs of a decedent may institute an ordinary civil action, there being no pending special proceeding, since this is to protect the rights of the decedent. Thus:

As heirs, the petitioners have legal standing to challenge the deeds of sale purportedly signed by Paulina Baranda for otherwise property claimed to belong to her estate will be excluded therefrom to their prejudice. Their claims are not merely contingent or expectant, as argued by the private respondents, but are deemed to have vested in them upon Paulina Baranda's death in 1982, as, under Article 777 of the Civil Code, "the rights to the succession are transmitted from the moment of the death of the decedent." While they are not compulsory heirs, they are nonetheless legitimate heirs and so, since they "stand to be benefited or injured by the judgment or suit," are entitled to protect their share of successional rights.

This Court has repeatedly held that "the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided that there is no pending special proceeding for the settlement of the decedent's estate."

There being no pending special proceeding for the settlement of Paulina Baranda's estate, the petitioners, as her intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, but to the estate itself of the decedent, for distribution later in accordance with law. Otherwise, no one else could question the simulated sales and the subjects thereof would remain in the name of the alleged vendees, who would thus have been permitted to benefit from their deception. In fact, even if it were assumed that those suing through attorneys-in-fact were not properly represented, the remaining petitioners would still have sufficed to impugn the validity of the deeds of sale.[29] (Emphasis supplied)

Notably, in enforcing the rights of the plaintiffs in *Baranda*, this Court ordered the reinstatement of the trial court's decision, which made no declaration on the status of the heirs but instead directed that all the lots in question be transferred to the decedent's estate.

Likewise, in *Marquez v. Court of Appeals*,[30] this Court reinstated the trial court's ruling, which deemed an affidavit of adjudication and donation inter vivos void for excluding the decedent's other heirs in its execution, without making an outright declaration as to who the heirs were. A similar conclusion was held in *Pacaña-Contreras v. Rovila Water Supply, Inc.*,[31] where this Court allowed the decedent's heirs to be impleaded in an action for accounting and damages to protect the rights of the deceased.

In *Heirs of Gregorio Lopez v. Development Bank of the Philippines*,[32] this Court reinstated the trial court's decision nullifying an affidavit of self-adjudication simply because it did not reflect the interests of all the heirs. As with the other cases, this Court also made no declaration on heirship, opting to have it threshed out in a separate special proceeding. It only ruled insofar as to protect the decedent's rights and estate.

Lastly, in *Capablanca v. Heirs of Bas*,[33] this Court held that a judicial declaration of heirship is not necessary in order that heirs may assert their right to the property of the deceased. However, in the same case, it was made clear that the action filed by the plaintiff was one of protecting the right of the ancestor and not as right as an heir:

Contrary to the erroneous conclusion of the Court of Appeals, this Court finds no need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property.

The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs.

Petitioner's claim is anchored on a sale of the property to her predecessor-in-interest and not on any filiation with the original owner. What petitioner is pursuing is Norberto's right of ownership over the property which was passed to her upon the latter's death.

This Court has stated that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased. In *Marabilles v. Quito*:

The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself. Thus, it has been held that "[t]here is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor" [34] (Emphasis in the original, citations omitted)

Like the other cases, this Court in *Capablanca* reinstated the trial court's ruling, which once again made no declaration on heirship but simply canceled the transfer certificates of title.

This case is markedly different. Here, based on their claim as compulsory heirs, private respondents seek not only the annulment of the Affidavits of Self-Adjudication, but also the partition of the estate of Rosie. In so doing, they are not protecting the right of the decedent. Instead, they are attempting to protect their own claim to the estate as heirs through an ordinary civil action.

III

Here, petitioner, whether in good or bad faith, executed Affidavits of Self-Adjudication stating that he was the sole heir of Rosie's estate under Rule 74, Section 1[35] of the Rules of Court. On the other hand, private respondents, being the deceased's siblings, claim that they are compulsory heirs. Although they seek to annul the affidavits and cancel the Transfer Certificates of Title, the main issues of their Complaint depends on the determination of whether they are indeed heirs. As such, what they filed was a special proceeding camouflaged as an ordinary civil action.

Even if the Complaint were deemed an ordinary civil action, all the trial court may declare is whether petitioner fraudulently executed the Affidavits of Self-Adjudication. If the trial court were to determine who Rosie's heirs are, it would be in excess of its jurisdiction for, undeniably, it is only a probate or intestate court that has that kind of jurisdiction.

True, this Court has held several times that parties in interest may commence ordinary civil actions arising out of their rights of succession without the need for a separate judicial declaration of heirship. However, the rulings in those cases would only affect the specific cause of action presented. It will not extend to other proceedings that may involve the heirs or properties of the deceased.

The rule that heirship must first be declared in a special proceeding is not merely so a probate court is given precedence over a regular court in estate proceedings. Instead, what is being prevented is the lack of notice an ordinary civil action has to the entire world as opposed to that of a special proceeding. If parties institute any ordinary civil action that essentially declares heirship, anyone outside of this action can simply contest the ruling, as this is not an action in rem. On the contrary, special proceedings are equipped with different procedures that would make its decision conclusive to all, and not just to the parties involved. This ensures that the partition of the decedent's estate would reach a finality.

Contrary to the majority's assertion, to allow the determination of heirship in an ordinary civil action would in no way contribute to judicial economy. Rather, it may potentially begin circuitous proceedings where, after a trial court declares a decedent's heirs in an ordinary civil action, other interested third parties will contest the decision and eventually elevate the matter to this Court—only to remand the case to a trial court sitting as a probate or intestate court to finally settle the question of heirship and estate of the deceased.

Thus, it is necessary to follow the rule that the issue of heirship must first be settled in an estate proceeding before it is declared in an ordinary proceeding. In *Natcher*:

Of equal importance is that before any conclusion about the legal share due to a compulsory heir may be reached, it is necessary that certain steps be taken first. The net estate of the decedent must be ascertained, by deducting all payable obligations and charges from the value of the property owned by the deceased at the time of his death; then, all donations subject to collation would be added to it. With the partible estate thus determined, the legitime of the compulsory heir or heirs can be established; and only thereafter can it be ascertained whether or not a donation had prejudiced the legitimes.

A perusal of the records, specifically the antecedents and proceedings in the present case, reveals that the trial court failed to observe established rules of procedure governing the settlement of the estate of Graciano Del Rosario. This Court sees no cogent reason to sanction the non-observance of these well-entrenched rules and hereby holds that under the prevailing circumstances, a probate court, in the exercise of its limited jurisdiction, is indeed the best forum to ventilate and adjudge the issue of advancement as well as other related matters involving the settlement of Graciano Del Rosario's estate.[36] (Citations omitted)

This rule is one of procedure that does not contradict substantive law, particularly, Article 777 of the Civil Code. Remedial or procedural laws are designed precisely to facilitate the effective adjudication of cases. They "do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights." [37] Thus, compliance with procedural rules is the general rule. Abandoning them should only be done in the most exceptional circumstances.[38]

Though the Regional Trial Court may act on the annulment of the Affidavits of Self-Adjudication, this does not vest in it the authority to determine whether private respondents are heirs for the estate settlement, be it for convenience or practicality. Since the determination of private respondents as heirs is precisely what is being asked in this case, it follows that the Regional Trial Court cannot assume jurisdiction over the subject matter.

Ultimately, I cannot agree that a preliminary determination of heirship can be attained in an ordinary civil action, even if it is only regarding the cause of action. All that can be determined is whether the Affidavits of Self-Adjudication were invalid given the presence of fraud. More important, I do not agree that private respondents' Complaint was an ordinary civil action. The relief they ask pertains to the determination of their heirship. What they filed was a special proceeding disguised as an ordinary civil action—one beyond the Regional Trial Court's jurisdiction.

ACCORDINGLY, I vote to dismiss the Petition without prejudice to the refile of the proper proceeding to

adjudicate their rights as heirs if warranted.

[1] Ponencia, p. 8.

[2] Batas Pambansa Bilang 129 (The Judiciary Reorganization Act of 1980).

[3] Ponencia, p. 10.

[4] 367 Phil. 438 (1999) [Per J. Panganiban, First Division].

[5] Id. at 445.

[6] Complaint, p. 12.

[7] 713 Phil. 570 (2013) [Per J. Perlas-Bernabe, Second Division].

[8] Id. at 575-576 citing Heirs of Teofilo Gabatan v. CA, 600 Phil. 112 (2009) [Per J. Leonardo-De Castro, First Division].

[9] 418 Phil. 669 (2001) [Per J. Buena, Second Division].

[10] Id. at 676-678.

[11] *Leriu v. Longa*, G.R. No. 203923, October 8, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64687>> [Per J. Leonardo-De Castro, First Division].

[12] Id. citing *Pilapil v. Heirs of Maximino R. Briones*, 519 Phil. 292 (2006) [Per J. Chico-Nazario, First Division].

[13] 748 Phil. 706 (2014) [Per J. Leonen, Second Division].

[14] Id. at 725-726.

[15] SECTION 4. Liability of distributees and estate. — If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made. (Emphasis supplied)

[16] *Heirs of Ypon*, 713 Phil. 570, 576-577 (2013) [Per J. Perlas-Bernabe, Second Division] as cited in ponencia, p. 12.

[17] 735 Phil. 434 (2014) [Per J. Velasco, Jr., Third Division].

[18] 504 Phil. 456 (2005) [Per J. Carpio Morales, Third Division].

[19] *Rebusquillo v. Spouses Gualvez*, 735 Phil. 434, 441-143 (2014) [Per J. Velasco, Jr., Third Division].

[20] 100 Phil. 364 (1956) [J. Concepcion, En Banc].

[21] *Id.* at 378.

[22] 67 Phil. 213 (1939) [Per J. Morean, En Banc].

[23] 95 Phil. 614 (1954) [Per J. Concepcion, En Banc].

[24] 100 Phil. 64 (1956) [Per J. Bautista-Angelo, En Banc].

[25] 98 Phil. 677 (1956) [Per J. Bengzon, First Division].

[26] *Id.* at 678-678.

[27] 163 Phil. 156 (1976) [Per J. Martin, First Division].

[28] 234 Phil. 64 (1987) [Per. J. Cruz, First Division].

[29] *Id.* at 74-75.

[30] 360 Phil. 843 (1998) [Per J. Romero, Third Division].

[31] 722 Phil. 460 (2013) [Per J. Brion, Second Division].

[32] 747 Phil. 427 (2014) [Per J. Leonen, Second Division].

[33] 811 Phil. 861 (2017) [Per J. Leonen, Second Division].

[34] *Id.* at 870-871.

[35] RULES OF COURT, Rule 74, sec. 1 (1) provides:

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

[36] *Natcher v. Court of Appeals*, 418 Phil. 669, 679-680 (2001) [Per J. Buena, Second Division].

[37] *Tan, Jr. v. Court of Appeals*, 424 Phil. 556 (2002) [Per J. Puno, First Division].

[38] *Pilapil v. Heirs of Briones*, 543 Phil. 184 (2007) [Per J. Chico-Nazario, Third Division].

CONCURRING AND DISSENTING OPINION

GESMUNDO, J.:

I concur with the ponencia that the petition must be denied. However, I respectfully dissent on the pronouncement in the ponencia that the established rule on declaration of heirs in "Ypon, Yaptinchay, Portugal, Reyes, Heirs of Gabatan v. Court of Appeals, and other similar cases, which requires a prior determination of heirship in a separate special proceeding as a prerequisite before one can file an ordinary civil action to enforce ownership rights acquired by virtue of succession should be abandoned." [1]

On May 1, 2008, Rosie Larlar Treyes (Rosie), the wife of Dr. Nixon Treyes (petitioner), died intestate. Rosie did not have any children and had seven (7) siblings, i.e., the private respondents Antonio, Emilio, Heddy, Rene, Celeste, Judy, and Yvonne. At the time of her death, Rosie left behind as conjugal properties fourteen (14) real estates.

Petitioner executed two (2) Affidavits of Self-Adjudication dated September 2, 2008 and May 19, 2011, which were registered with the Register of Deeds of Marikina City on March 24, 2011, and with the Register of Deeds of San Carlos City, Negros Occidental on June 5, 2011, respectively. He adjudicated the estate of Rosie unto himself, claiming that he was the sole heir of his deceased spouse, which effectively deprived the private respondents of their share in the estate of the decedent. New transfer certificates of title were registered in the name of petitioner covering the land of Rosie.

Hence, private respondents filed a Complaint for Annulment of Affidavit of Self-Adjudication, Cancellation of Transfer Certificates of Title, Reconveyance of Ownership and Possession, Partition, and Damages before the Regional Trial Court of San Carlos City, Branch 59 (RTC) against petitioner, among others.

In said complaint, private respondents alleged that they are all brothers and sisters while petitioner is their brother-in-law. The copies of the birth certificates of private respondents and Rosie were attached as Annexes "A to H" of their complaint to prove the said assertion. [2] They alleged that petitioner, in gross bad faith and with malicious intent, falsely and fraudulently caused the properties of Rosie to be transferred to his own name to the exclusion of private respondents by the execution of those two (2) Affidavits of Self-Adjudication. [3]

Private respondents assert that it is an irrefutable fact that they are co-heirs with petitioner and are collectively entitled to a share consisting of one-half (1/2) of the estate. Thus, the Affidavits of Self-Adjudication of petitioner must be annulled and declared to be of no legal effect. [4] Private respondents also claimed that they are indubitably co-owners of the properties of Rosie by virtue of being co-heirs. Accordingly, there is a need to delineate the specific shares of each of the co-owners of the properties of Rosie's estate to avoid further conflict as to the use and disposition of the same and the specific shares of the co-heirs must be determined and partitioned. [5]

Private respondents prayed for the following reliefs:

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

a.)

Declaring the Affidavit of Self-Adjudication dated September 2, 2008 (Annex "X") and May 19, 2011 (Annex "Y") as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;

b.)

Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;

c.)

Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;

d.)

Ordering the defendant to pay plaintiffs moral damages of not less than P500,000.00 and exemplary damages of not less than P500,000.00.

e.)

Ordering the defendant to pay plaintiffs attorney's fees of P200,000.00 and litigation expenses of not less than P150,000.00.

Other reliefs as may be just and equitable under the premises are also prayed for.[6] (emphasis supplied)

Initially, petitioner filed a first Motion to Dismiss dated October 25, 2013, asking for the dismissal of the complaint due to lack of jurisdiction over his person. However, the proper re-service of summons was effected, thus, the first Motion to Dismiss was rendered moot.

Petitioner then filed a second Motion to Dismiss raising the following grounds: (1) improper venue; (2) prescription; and (3) lack of jurisdiction over the subject matter. The said motion was denied by the RTC.

Aggrieved, petitioner filed a Petition for Certiorari before the Court of Appeals (CA) arguing that the RTC committed grave abuse of discretion in denying his second Motion to Dismiss.

In its August 18, 2016 Decision, the CA dismissed the petition. It held that since the complaint primarily seeks to annul petitioner's Affidavits of Self-Adjudication, which partakes the nature of an ordinary civil action, the RTC had jurisdiction to hear and decide the private respondents' Complaint.

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its June 1, 2017 Resolution. Hence, this petition.

Petitioner argues, among others, that the RTC did not have jurisdiction over the complaint because there is yet to be determination in a special proceeding that private respondents are legal heirs of the decedent, hence, they are not real parties in interest. He cited the cases of *Heirs of Magdaleno Ypon v. Ricaforte (Ypon)*,^[7] *Reyes v. Enriquez (Reyes)*,^[8] *Heirs of Guido and Isabel Yaptinchay v. Del Rosario (Yaptinchay)*,^[9] and *Portugal v. Portugal-Beltran (Portugal)*,^[10] which held that the issue on the lack of a previous determination of heirship in a special proceeding was characterized as a failure to state a cause of action when a case is instituted by parties who are not real parties in interest. Since private respondents have yet to establish in a special proceeding their status as legal heirs of Rosie, then the ordinary civil action they instituted must be dismissed.

The ponencia held that the argument lacks merit. It held that the rule laid down in *Ypon*, *Yaptinchay*, *Portugal*, *Reyes*, and other similar cases, which requires a prior determination of heirship in a separate special proceeding before one can invoke his or her status as a legal heir for the purpose of enforcing or protecting a right in an ordinary civil action, must be abandoned. Instead, the ponencia proposes a new rule: unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the nullity of a deed, instrument, or conveyance of property, or any other action in the enforcement of their successional rights, without the necessity

of a prior and separate judicial declaration of their status as such.

With respect to such view, I disagree. The Court should not abandon the existing doctrines with respect to declaration of heirs.

Succession as mode of
acquiring ownership; Art.
777 obviates a vacuum in
ownership but does not do
away the declaration of
heirship

The ponencia would like to set aside the established rules on the declaration of heirship based on Article 777 of the Civil Code that the property of the decedent transfers from the moment of death; hence, a declaration of heirship is not indispensable. However, it is my humble view that the established rules on the declaration of heirship under the Rules of Court must be maintained because there should be a separate proceeding to appropriately determine who the heirs of the decedent are.

The Civil Code provides:

Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

Succession as mode of acquiring ownership[11] does not start and end at the moment of the death of the decedent owning properties.

"What happens is that the death of a person consolidates and renders immutable, in a certain sense, rights which up to that moment were nothing but mere expectancy. These rights arise from the express will of the testator or from the provisions of the law, but they do not acquire any solidity and effectiveness except from the moment of death. Before this event, the law may change, the will of the testator may vary, and even circumstances may be modified to such an extent that he who have expected to receive property may be deprived of it; but once death supervenes, the will of the testator becomes immutable, the law as to the succession can no longer be changed, disinheritance cannot be effected, and the rights to the succession acquire a character of marked permanence. In other words, what the article really means is that the succession is opened by the death of the person from whom the inheritance comes." [12]

"This view maintains that there are two (2) things to consider, each being useless without the other. One is the origin of the existence of the right, which may be the will of the testator or the provisions of the law; and the other is what makes the right effective, which is the death of the person whose succession is in question. The provision should therefore be understood as meaning that 'the rights to the succession of a person are transmitted from the moment of his death, and by virtue of prior manifestations of his will or of causes predetermined by law.'" [13]

"Whatever terminology is used by the law, however, it is clear that the moment of death is the determining point when the heirs acquire a definite right to the inheritance, whether such right be pure or conditional. The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings. It is immaterial whether a short or long period of time elapses between the death of the predecessor and the entry in the possession of the properties of the inheritance, because the right is always deemed to retroact to the moment of death. Thus, the right of the State to collect the inheritance tax accrues at the moment of death, notwithstanding the postponement of the actual possession and enjoyment of the estate by the heir, and the tax is based on the value of the property at that time, regardless of any subsequent appreciation or depreciation." [14]

Although death marks the precise moment when the transmission of successional rights takes place, it is not the only factor for effective transmission of the decedent's property to the successors. In order for there to be effective transmission, the following are the requisites: (1) death of decedent which produces the opening of succession; (2) the express will of the testator calling certain persons to succeed him or in default thereof, the provision of law prescribing the successor; (3) existence and capacity of the successor; and (4) acceptance of the inheritance by the successor.[15]

Death opens the door for succession. But settlement proceedings, which entail the determination of the heirs entitled to the transfer of properties from the decedent, the determination of respective shares by way of partition or by way of testamentary disposition and ultimately the distribution of their respective shares in the decedent's property, closes the door of succession so to speak. Evidently, there is a need for declaration of heirship be it either judicial or extrajudicial, as the case maybe, to determine the existence and capacity of the successor.

Art. 777 is intended to provide the reckoning point when succession takes place to obviate a vacuum in the ownership but it is not intended to do away with judicial or extrajudicial proceedings for declaration of heirship. To adopt as a general rule that declaration of heirship may be dispensed with relying on the provision of Art. 777 would be to disregard the existing substantive law and procedural rules on settlement of estate of a decedent fraught with unintended consequences.

Art. 777 provides that the reckoning timeline as to effectivity of the rights of heirs to the property of the decedent is consistent with the doctrine that "law like nature abhors vacuum"[16] in ownership. That the right of the heirs to the property vest in the heirs prior to declaration of heirship, intends to preclude a controversy on what the reckoning date is when the heirs, ultimately receiving the property from the decedent, should enjoy the attributes of ownership.

The relationship between Art. 777 and Article 428[17] of the Civil Code shows why ownership of property acquired through succession is made to take effect at the moment of death of the decedent. The economic life of organized society would be impaired, public peace and order would be disturbed, and chaos would prevail if ownership of property could not be transmitted upon the death of the owner; the property would become *res nullius*, and serious conflicts and public disturbances would arise in the course of efforts of others to acquire such property by occupation.[18]

"Is death the cause of succession? According to some authors the wording of the law is erroneous since death does not transmit but merely opens succession. Manresa, however, believes that since succession is one of the modes of acquiring ownership and through it there is transfer to the heirs of all the rights of the deceased by virtue of his death, there exists, therefore, a true transmission from one person to another. It is believed, however, that the cause of succession will depend on whether it is testate or intestate succession. In case of testate succession, the cause is the law in the case of legitimes and the will of the deceased in the case of the free portion. In intestate succession the cause is the law. Death under this view merely furnishes the condition or the moment when the cause will operate or become effective."[19]

The Civil Code also provides:

Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.

The word "succession" may be understood in either of two (2) concepts. In one sense, it means the transmission of the property, rights and obligations of a person; and in another sense, it means the universality or entirety of the property, rights and obligations transmitted by any of the forms of succession admitted in law.[20] Article 712 of

the Civil Code states:

Art. 712. Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts by tradition.

They may also be acquired by means of prescription."

Succession is a derivative mode of acquiring ownership. "Derivative modes are those based on a right previously held by another person, and therefore subject to the same characteristics as when held by the preceding owner.[21] In succession, there was an original owner of property but the same is transferred to those entitled to receive it by testate or intestate. But the actual transfers of property might not be immediate. After the decedent dies, during the hiatus between the time of the death of the decedent and the time when the residual property of the estate is distributed to those who are entitled to receive it, there is no gap in the ownership of the property. It prevents the property from being *res nullus* from the moment of death of the decedent to the time that title is vested in the heirs of the decedent.

Indeed, death of the decedent is not the sole determining factor affecting the transmission of properties, rights, and obligation to the heirs; rather, the prior manifestations of the will, in case of testate succession, and the causes pre-determined by law, in case of intestate succession, should be considered. Again, the death of the decedent under Art. 777 of the Civil Code does not provide an unbridled license to do away with the declaration of heirship under the Rules of Court. Rather, the death of the decedent is a derivative mode of acquiring title to obviate a vacuum in the ownership and to prevent the said properties from becoming *res nullus*. Nevertheless, to enforce the manner or mode by which the properties of the decedent are transferred, there must still be a declaration of heirship to determine the existence and capacity of the successors, who are lawfully entitled to the decedent's property.

Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.[22]

Verily, the Civil Code recognizes that the manner and method of the transfer of the rights, properties, and obligations of the decedent from the moment of death to the heirs shall be subject to the provisions of the Rules of Court.[23] To reiterate, death under Art. 777 of the Civil Code cannot by itself be the sole basis for the recognition of the rights of succession because the law itself recognizes the applicability of the Rules of Court, with respect to the enforcement of such rights.

An asserted right or claim to ownership or a real right over a thing arising from a juridical act, however justified, is not per se sufficient to give rise to ownership over a res. That right or title must be completed by fulfilling certain conditions imposed by law. Hence, ownership and real rights are acquired only pursuant to a legal mode or process. While title is the juridical justification, mode is the actual process of acquisition transfer of ownership over a thing in question.[24] In *Acap v. CA*,[25] the Court held that any juridical act, such as a declaration of heirs, must be in accordance with the mode of transmission, i.e. succession upon the death of the decedent, and the fulfillment of the conditions imposed by law.

For instance, when a decedent dies intestate, the heir cannot simply proceed to the Register of Deeds and present his or her birth certificate and the decedent's death certificate to prove the rights as an heir and to have the properties of the decedent registered under his or her name. Rather, the heir must comply with the manner or

method provided under the Rules of Court for the enforcement of his or her successional rights.

Declaration of heirship;

General rule

The Rules of Court provide for several methods for the enforcement of successional rights: testate, intestate or a mixture of testate and intestate succession. In testate succession, the Civil Code requires that the will first be proved and allowed in accordance with the Rules of Court before it passes either real or personal property.[26] Thus, when there is testate succession, a special proceeding under Rule 76[27] of the Rules of Court must be instituted for the allowance or disallowance of a will. After the allowance of the will by the probate court, there will be a settlement proceeding to determine the claims against the estate and, eventually, order the distribution of the estate to the heirs, devisees, and legatees. Nevertheless, even in testate succession, a summary settlement of estate of a small value is recognized. Under Section 2, Rule 74[28] of the Rules of Court, whenever the gross value of the estate of a deceased person, whether he died testate or Intestate, does not exceed P10,000.00, a petition for summary settlement of the estate maybe availed of.

In intestate succession, the general rule is that when a person dies leaving property, the same should be judicially administered and the competent court should appoint a qualified administrator, in the order established in Section 6, Rule 78,[29] whether the deceased left a will or not, should he fail to name an executor therein. An exception to this rule is established by Section 1, Rule 74 when there can be an extrajudicial settlement of estate. Under this exception, when all the heirs are of lawful age and there are no debts due from the estate, they may agree in writing to partition the property without instituting the judicial administration or applying for the appointment of an administrator.

Declaration of heirship is a process in a testate or intestate succession by which the heirs of the decedent are legally acknowledged. It is an indispensable process because it determines who the rightful heirs are to whom the properties, rights or obligations of the decedent are transferred to from the moment of death.

The procedure for the declaration of heirship dates back to the Spanish procedural laws. Spanish procedural law provided an action for the declaration of heirship (declaration de herederos) whereby one claiming the status of heir could have his right thereto judicially declared, and this judicial declaration of heirship unless and until set aside or modified in a proper judicial proceeding, was evidence of the fact of heirship which the officials charged with the keeping of the public records, including the land registry, were bound to accept as a sufficient basis for the formal entry, in the name of the heir, of ownership of the property of the deceased.[30] Thus, in the old procedural laws, only a judicial declaration of heirship was allowed. If the declaration of heirship does not undergo the judicial process, then the public offices shall not recognize such.

As decades passed, the procedural laws were amended, jurisprudence developed, and the process of the declaration of heirs significantly changed. Under the present Rules of Court, a declaration of heirs is allowed extrajudicially in certain instances. When the heirs agree among themselves that they are all recognized heirs of the decedent who died intestate, and the estate of decedent complies with the requisites under Section 1, Rule 74,[31] the heirs may simply execute an Extrajudicial Settlement of Estate wherein they will declare that they are the rightful heirs of the decedent. Similarly, under the Civil Code, the recognized heirs may also voluntarily execute an Extrajudicial Partition Agreement where they will partition the co-owned property of the decedent among themselves.[32] These extrajudicial processes are effective when the heirs uniformly agree among themselves on the said declaration of heirs and their respective shares.

The problem arises when there is no agreement among themselves as to who the rightful heirs are and the respective shares they should receive, or when some of the heirs are left out of the Extrajudicial Settlement of

Estate or Extrajudicial Partition Agreement. In that situation, they must resort to a judicial declaration of heirs before the court to resolve the conflict and once and for all determine who the rightful heirs are.

The Rules of Court and jurisprudence have provided a clear set of rules on how to undertake the judicial declaration of heirs. As a general rule, a judicial declaration of heirship can only be made in a special proceeding; it cannot be undertaken in an ordinary civil action. The rationale for this rule can be explained by the very definition of a special proceeding and an ordinary civil action. Under Section 3, Rule 1[33] of the 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 defined as "a remedy by which a party seeks to establish a status, a right, or a particular fact." The judicial declaration of heirship can be made only in a special proceeding inasmuch as the petitioners therein are seeking the establishment of a status or right as an heir.[34] Under Section 1, Rule 73[35] of the Rules of Court, the court where the special proceeding is filed for the declaration of heirship shall exercise jurisdiction to the exclusion of all other courts.[36]

As early as 1905, the Court explained the justification for this general rule in *Pimentel v. Palanca* (Pimentel):[37]

The will of Margarita Jose was made and she died after the present Code of Civil Procedure went into effect in these Islands. Her will was duly proved and allowed under the provisions of that Code. An administrator was duly appointed and he is now engaged in settling the affairs of the estate. The important question in this case is, Can an ordinary action at law be maintained under these circumstances by a person claiming to be an heir of the deceased against other persons, also claiming to be such heirs, for the purpose of having their rights in the estate determined? We think that such an action is inconsistent with the provisions of the new code, and that it can not be maintained. Section 600 of the present Code of Civil Procedure provides that the will of an inhabitant of the Philippine Islands shall be proved and his estate settled in the Court of First Instance in which he resided at the time of his death. By section 641 when a will is proved it is obligatory upon the court to appoint an executor or administrator. By virtue of other provisions of the code this executor or administrator has, under the direction of the court, the full administration and control of the deceased's property, real and personal, until a final decree is made in accordance with section 753. During the period of administration the heirs, devisees, and legatees have no right to interfere with the administrator or executor in the discharge of his duties. They have no right, without his consent, to the possession of any part of the estate, real or personal. The theory of the present system is that the property is all in the hands of the court, and must stay there until the affairs of the deceased are adjusted and liquidated, and then the net balance is turned over to the persons by law entitled to it. For the purpose of such administration and distribution there is only one proceeding in the Court of First Instance. That proceeding is not an action at law, but falls under Part II of the Code of Civil Procedure, and is a special proceeding. After the estate is fully settled, and all the debts and expenses of administration are paid, the law contemplates that there shall be a hearing or trial in this proceeding in the Court of First Instance for the purpose of determining who the parties are that are entitled to the estate in the hands of the executor or administrator for distribution, and after such hearing or trial it is made the duty of the court to enter a decree of final judgment, in which decree, according to section 753, the court "shall assign the residue of the estate to the persons entitled to the same, and in its order the court shall name the persons and proportions or parts to which each is entitled." (See also sec. 782 of the Code of Civil Procedure.) By section 704 it is expressly provided that no action shall be maintained by an heir or devisee against an executor or administrator for the recovery of the possession or ownership of lands until there is a decree of the court assigning such lands to such heir or devisee, or until the time allowed for paying debts has expired.

It seems clear from these provisions of the law that while the estate is being settled in the Court of First Instance in a special proceeding, no ordinary action can be maintained in that court, or in any other court, by a person claiming to be the heir, against the executor or against other persons claiming to be heirs, for the purpose of having the rights of the plaintiff in the estate determined. The very purpose of the trial or hearing provided for in section 753 is to settle and determine those questions, and until they are settled and determined

in that proceeding and under that section no action such as the present one can be maintained.

An examination of the prayer of the amended complaint above quoted will show that to grant it would be to prevent the settlement of the estate of a deceased person in one proceeding in the Court of First Instance. It would require, in the first place, the revocation of the judgment probating the will. This relief can not be obtained in an ordinary action. The plaintiff not having appealed from the order admitting the will to probate, as she had a right to do, that order is final and conclusive. It does not, however, as the court below held, determine that the plaintiff is not entitled to any part of the estate. The effect of such a decree was stated in the case of *Castañeda v. Alemany* (2 Off. Gaz., 366). The statements there made need not be repeated here. The plaintiff in her amended complaint asks also that the appointment of Engracio Palanca be annulled. This relief can not be granted in an ordinary action. The plaintiff had a right to appeal from the order of the court appointing the administrator in this case, and not having exercised that right such order is final and conclusive against her. The plaintiff also asks that the administrator be required to render an account to her of his administration, and deposit in court the money which he has in his possession. To grant this relief in an ordinary action between parties would be to take away from the court having in charge the settlement of the estate the express powers conferred upon it by law. To grant that part of the prayer of the amended complaint which asks that the plaintiff be declared to be entitled to three fourths of the property of the estate, would be to take away from the court administering the estate the power expressly given to it by section 753 to determine that question in the proceeding relating to the estate.[38] (emphases and underscoring supplied)

In other words, a special proceeding for the declaration of heirs should be instituted, precisely, to establish the rights and status of the heirs. An ordinary civil action is not the proper remedy because the establishment of the status of the heirs is not within its purpose.

While the rights of succession are transmitted from the moment of the death of the decedent, Pimentel explained that the properties inherited by the heirs are still subject to the controversies, disagreements, existing debts, expenses, and liabilities of the decedent's estate. Hence, a special proceeding for the declaration of heirs is necessary to determine who are truly entitled to the properties of decedent, which shall also be liable to existing obligations of the estate. Indeed, whatever debts, liabilities, or obligations survive the death of the decedent, who shall be carried over to the inherited properties. Precisely, a special proceeding for the declaration of heirship is necessary to orderly determine the heirs, who shall be bound by such existing obligations.

Accordingly, when there is an Extrajudicial Settlement of Heirs in intestate succession under Section 1 of Rule 74[39] or an extrajudicial partition is undertaken and a disputed issue regarding the validity of the heirship arises, the general rule for judicial declaration should still be applied to conclusively resolve such conflict. A special proceeding must be instituted to finally settle the issues surrounding the declaration of heirship.

Further, the issue on the declaration of heirs in a special proceeding is within the exclusive jurisdiction of the settlement court. Under the Rules of Court Section 1 of Rule 73, the court first taking cognizance of the settlement of the estates of the deceased shall exercise jurisdiction to the exclusion of all other courts.[40] The reason for this provision of the law is obvious. The settlement of the estate of a deceased person in court constitutes but one proceeding. For the successful administration of that estate it is necessary that there should be but one responsible entity, one court, which should have exclusive control of every part of such administration. To entrust it to two or more courts, each independent of the other, would result in confusion and delay.[41]

Likewise, the declaration of heirs is indispensable in the special proceeding because in the distribution stage of the settlement proceeding, the court determines who are entitled to inherit after all the debts and charges against the estate are completed. This is the express provision of Section 1 of Rule 91, so that the submission of evidence in the special proceeding to determine the persons entitled to share in the residue of the estate, for the purpose of including them in what is known as the Order of Declaration of Heirs, is towards the last stage of the distribution

proceedings, after the debts, charges and expenses of administration, have been paid.[42] Without such declaration of heirs in a special proceeding for the settlement of the estate, the court would not be able to determine whom the estate shall be distributed. If there is a controversy before the court as to who the lawful heirs of the deceased person are or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.[43] Again, this is in accordance with the very definition of a special proceeding: a remedy by which a party seeks to establish a status, a right, or a particular fact. In this case, the party seeks to establish the right as an heir so that his or her share in the inheritance is judicially recognized.

In his book, Vicente J. Francisco stated that if there is a controversy before the court as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the court shall determine the controversy after the testimony as to such controversy has been taken in writing by the judge, under oath.[44] Indeed, a special proceeding for the judicial declaration of heirship is necessary when there is a disputed controversy as to whom the rightful heirs of the decedent are.

Similarly, in *Aliasas v. Alcantara*,[45] the Court explained that while the rights to a person's succession are transmitted from the moment of his death, and thus the heirs of the deceased, by the mere fact of his death, succeed to all his rights and obligations, only a division legally made of hereditary property can confer upon each heir the exclusive ownership of the property which may have been awarded to him. Therefore, a special proceeding is necessary to declare the rightful heirs, settle the claims against the estate, and the finally distribute the estate in accordance with the order of distribution.

Judicial determination of
heirship is indispensable

Judicial determination of heirships cannot be dispensed with both in terms of substantial and procedural laws and is best illustrated in case of escheat, a special proceeding. The Civil Code provides:

Article 1011. In default of persons entitled to succeed in accordance with the provisions of the preceding Sections, the State shall inherit the whole estate."

The last in the order of intestacy is the State. It should be noted that the State is an intestate heir and gets the property as an heir.[46] Further, Article 1012 of the Civil Code provides:

Art. 1012. In order that the State may take possession of the property mentioned in the preceding article, the pertinent provisions of the Rules of Court[47] must be observed.

"The State, therefore, does not ipso facto become the owner of the estate left without heir. Its right to claim must be based upon a court's decree allowing it to have the estate, and after compliance with the procedure laid down by the Rules of Court. When this procedure has neither been followed nor complied with, a court does not acquire jurisdiction either to take cognizance of the escheat case or to promulgate an order adjudicating to a municipality property to which there is no apparent heir."[48] In other words, it is mandatory that there be a judicial declaration that the decedent left no heirs entitled to his/her property before the state as an intestate heir can escheat the property in its favor.

By way of example as to how Art. 777 of the Civil Code relates to the time of reckoning when ownership is vested in the heirs is in an escheat proceeding: If the state is successful in escheating a property that generates income from rentals of a commercial building, the State can demand rentals, (*jus fruiendi*) from the tenants without controversy as to the reckoning date because Art. 777 fixed it from the moment of the death of the decedent.

Consequently, the premise of the ponencia – that judicial declaration of heirship may be set aside, especially in intestate succession, due to Art. 777 of the Civil Code since the property is transmitted from the moment of death of the said decedent – is contradicted by Articles 1011 and 1012 of the Civil Code and under the Rules of Court.

Again, when a person dies intestate and there is no claiming heir over the estate, the State must first file a petition for escheat, a special proceeding, to judicially determine whether the deceased truly did not have any heir.[49] In that case, even if the decedent died intestate, the State, as an intestate heir, cannot immediately enforce its rights over the properties thereof from the moment of the decedent's death. There must first be a judicial determination of heirship to ensure that the deceased did not have any heir pursuant to Art. 1012 of the Civil Code. Only when the court is convinced in the special proceeding, upon satisfactory proof, that the decedent left no heir in the intestate succession, may the properties be escheated in favor of the State.[50]

Exception when ordinary civil
action may be instituted;
established rule on declaration
of heirship

As jurisprudence evolved, several exceptions to the general rule on the judicial declaration of heirs were formulated. An ordinary civil action involving the declaration of the heirs may be instituted, without a prior or separate special proceeding, in the following instances:

- When the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship;[51]
- When a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.[52]

The first exception was formulated due to practicality. When the parties have already voluntarily presented evidence regarding their rights as heirs in the ordinary civil action, it would be impractical to compel them to institute a separate special proceeding to determine the same issue.[53] In that instance, the parties do not anymore dispute the fact of heirship because they already presented evidence to establish such in the ordinary civil action. As a result, a separate special proceeding would be impractical, inconsequential, and unnecessary. This is also applied when the estate of the decedent only consists of one property and the parties already presented evidence regarding their heirship in the ordinary civil action.[54] Thus, for the sake of expediency, the Court allows the parties to institute an ordinary civil action regarding the rights of an heir even without a special proceeding for the declaration of heirs. To rule otherwise would result to unnecessary litigation because the pieces of evidence on the issue of heirship were already voluntarily presented by both parties and to dismiss the ordinary civil action would further delay the proceeding since a separate special proceeding for the declaration of heirs would tackle the same issue and evidence. In said instance, an ordinary civil action which considers the issue on the declaration of heirship, is justified.

The second exception was formulated in order to give an opportunity to the rightful heirs, who were not able to participate in the special proceeding that was already closed and terminated, to assert their successional rights even in an ordinary civil action. Under the Rules of Court, once a settlement proceeding has been closed and terminated with finality, it cannot be re-opened. In that situation, the heir who was not able to participate in the said proceeding is allowed to institute an ordinary civil action to assert his or her status as an heir even though the earlier special proceeding had already been closed. Consequently, this second exception was established so that the rights of the heirs are still recognized despite the termination of the special proceeding for the declaration of heirs.

In sum, the current rules on declaration of heirship are as follow:

Established Rule

General Rule: A declaration of heirship can only be made in a special proceeding; it cannot be undertaken in an ordinary civil action.

Exceptions: An ordinary civil action involving the declaration of heirs, even without a special proceeding for such purpose, may be instituted:

- When the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship;
- When a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.

However, the ponencia proposes that the established rule should be modified as follows:

Proposed Rule

Unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the nullity of a deed, instrument, or conveyance of property, or any other action in the enforcement of their successional rights, without the necessity of a prior and separate judicial declaration of their status as such.[55]

In other words, an ordinary civil action for the determination of heirship may be instituted by compulsory or intestate heir even without instituting a special proceeding. It practically sets aside the general rule as stated above.

It is my opinion that the Established Rule should be preserved because it has been consistently applied by jurisprudence, it has sufficient basis under the law and the Rules of Court, and it provides an orderly and stable process to determine the heirs.

Jurisprudence consistently
applied the Established
Rule

The ponencia cited several jurisprudence to support the Proposed Rule wherein the Court unequivocally allowed ordinary civil action involving the declaration of heirs without instituting a special proceeding. However, a review of the cited jurisprudence reveals that the Court consistently applied the Established Rule, hence, it is not necessary to abrogate or modify such rule. I will discuss the cases cited by the ponencia.

A. General Rule

In *Litam v. Rivera (Litam)*,^[56] there was a pending special proceeding for the settlement of the intestate estate of the deceased Rafael Litam. The petitioners therein filed a separate ordinary civil action, claiming that they were the children of the deceased by a previous marriage to a Chinese woman, and that they were entitled to inherit his one-half (1/2) share of the conjugal properties acquired during his marriage to Marcosa Rivera. The trial court in the ordinary civil action declared, among others, that the petitioners were not children of the deceased and that Marcosa was his only heir. On appeal, this Court ruled that such declaration – that Marcosa was the only heir of the decedent – was improper in the ordinary civil action because the determination of such issue was within the exclusive competence of the court in the special proceedings.

Evidently, the Court applied the general rule in the Established Rule that the declaration of heirs shall be conducted in the special proceeding because it seeks to establish a right, status, or particular fact. The first exception to the established rule was not applied because it cannot be gainsaid that the parties voluntarily presented evidence to establish the heirship; in fact, the evidence regarding the said heirship was disputed. The second exception to the established rule was also inapplicable because the special proceeding for the declaration of heirs was still pending and open before the settlement court.

In *Solivio v. Court of Appeals (Solivio)*,^[57] the deceased Esteban Javellana, Jr. was survived by Celedonia Solivio (Celedonia), his maternal aunt, and Concordia Javellana-Villanueva (Concordia), his paternal aunt. Celedonia filed the intestate proceedings and had herself declared as sole heir and administratrix of the estate of the decedent to facilitate the implementation of the latter's wish to place his estate in a foundation named after his mother. While the probate proceeding was pending, Concordia filed a separate ordinary civil action of partition, recovery of possession, ownership, and damages, where she sought to be declared as co-heir and for partition of the estate. This Court held that the "separate action was improperly filed for it is the probate court that has exclusive jurisdiction to make a just and legal distribution of the estate." This Court further held that "in the interest of orderly procedure and to avoid confusing and conflicting dispositions of a decedent's estate, a court should not interfere with probate proceedings pending in a co-equal court." Again, the general rule in the Established Rule, that there must be a special proceeding for the declaration of heirs was applied because the exceptions to such rule were not present in that case.

In the 1905 case of *Pimentel*, the decedent died testate. While the settlement proceeding was pending, the mother of the decedent filed a separate original civil action for declaration of heirship and that she be entitled to the properties of her daughter. The Court declared said original civil action shall not prosper because there was still a pending special proceeding for the declaration of heirs. It underscored the importance of having a single special proceeding for the declaration of heirs and the settlement of the estate so that all the debts and claims against the estate could be consolidated and applied and, afterwards, the estate can be distributed and partitioned to the heirs, legatees, and devisees in an orderly manner. Thus, the general rule in the Established Rule was still applied.

In *Ypon*, the petitioners filed an ordinary civil action for cancellation of title and reconveyance with damages. They alleged that Magdaleno Ypon died intestate and that respondent wrongly executed an affidavit of self-adjudication because they were actually the collateral relatives and successors-in-interest of Magdaleno. The respondent then filed an answer, attaching evidence that he was the only son and sole heir of Magdaleno. The lower court dismissed the complaint because the declaration of heirs should be made in a special proceeding and not in an ordinary civil action. On appeal, the Court affirmed the dismissal because a special proceeding must indeed be filed for the declaration of heirs. Once more, the general rule in the Established Rule was applied.

The Court also discussed the exceptions to the Established Rule in *Ypon*; however, those exceptions were not applicable in that particular case. Indeed, the first exception was not applicable because both parties did not voluntarily present evidence regarding the issue of declaration of heirship in the ordinary civil action. Petitioners only claimed being the collateral relatives and successors-in-interest of the decedent but did not present any evidence regarding such claim. In other words, the allegation regarding the heirship was completely unsubstantiated. On the contrary, the respondent was able to present evidence that he was the son and sole heir of the decedent. This greatly contradicted the claim of heirship of the petitioners. Stated differently, as there was a dispute regarding the issue of heirship between the parties, the Court found it best to first resort to a special proceeding for the judicial declaration of heirship and resolve who the lawful heirs of the decedent are.

Similarly, in *Yaptinchay*, the petitioners filed an ordinary civil action for annulment of title alleging that they were the legal heirs of decedent Yaptinchay, who died intestate, and that respondents wrongfully registered the

properties of the latter. The trial court dismissed the complaint reasoning that they must first file a special proceeding for the declaration of heirship. The Court affirmed the dismissal of the complaint. Evidently, the Court applied the general rule in the Established Rule that a special proceeding is required for a declaration of heirship to establish the right, status, and fact that they are heirs of the decedent.

The Court in *Yaptinchay* did not apply the first exception of the Established Rule because the parties did not voluntarily present evidence before the trial court regarding the issue of the declaration of heirship. Notably, the trial court observed that the petitioners "have not shown any proof or even a semblance [of the heirship] — 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."^[58] As the fact of heirship was not proven because no evidence was presented to establish such claim in the ordinary civil action, the proper recourse was to institute a special proceeding to precisely settle the issue on declaration of heirship.

In *Reyes*, the respondents filed an ordinary civil action for annulment of title alleging that they were the legal heirs of *Anacleto Cabrera* (*Cabrera*), who died intestate, and that petitioners wrongfully registered the land belonging to *Cabrera*. The trial court dismissed the complaint because the declaration of heirs must be instituted in a special proceeding. On appeal, the Court affirmed the dismissal and applied the general rule in the Established Rule that there must be special proceeding to establish the status of respondents as heirs of *Cabrera*. The Court did not apply the first exception to the Established Rule because the parties had yet to present any evidence to establish such declaration of heirship in the ordinary civil action, to wit:

In the same manner, the respondents herein, except for their allegations, have yet to substantiate their claim as the legal heirs of *Anacleto Cabrera* who are, thus, entitled to the subject property. Neither is there anything in the records of this case which would show that a special proceeding to have themselves declared as heirs of *Anacleto Cabrera* had been instituted. As such, the trial court correctly dismissed the case for there is a lack of cause of action when a case is instituted by parties who are not real parties in interest. While a declaration of heirship was not prayed for in the complaint, it is clear from the allegations therein that the right the respondents sought to protect or enforce is that of an heir of one of the registered co-owners of the property prior to the issuance of the new transfer certificates of title that they seek to cancel. Thus, there is a need to establish their status as such heirs in the proper forum.

Furthermore, in *Portugal*, the Court held that it would be superfluous to still subject the estate to administration proceedings since a determination of the parties' status as heirs could be achieved in the ordinary civil case filed because it appeared from the records of the case that the only property left by the decedent was the subject matter of the case and that the parties have already presented evidence to establish their right as heirs of the decedent. In the present case, however, nothing in the records of this case shows that the only property left by the deceased *Anacleto Cabrera* is the subject lot, and neither had respondents *Peter* and *Deborah Ann* presented any evidence to establish their rights as heirs, considering especially that it appears that there are other heirs of *Anacleto Cabrera* who are not parties in this case that had signed one of the questioned documents. Hence, under the circumstances in this case, this Court finds that a determination of the rights of respondents *Peter* and *Deborah Ann* as heirs of *Anacleto Cabrera* in a special proceeding is necessary.^[59] (emphasis supplied)

Accordingly, a special proceeding is necessary as the fact of heirship was not duly proven by evidence in the ordinary civil action and there was a dispute of whether respondents were the rightful heirs of the decedent. Thus, the trial court properly ruled that the respondents therein were not real parties in interest in the said ordinary civil action as they must institute a special proceeding for the declaration of heirship.

B. First Exception to the Rule

In *Cabuyao v. Caagbay*^[60] (*Cabuyao*), the plaintiff filed an action for quieting of titles against the defendants

who refused to vacate the land he inherited from his parents who died intestate. In his complaint, plaintiff attached several pieces of evidence, such as the death certificate of his parents and his baptismal certificate to prove that he was an heir. The defendants moved for the dismissal of the complaint because there should first be a special proceeding to declare heirship; and not an ordinary civil action. The Court held that the plaintiff may institute the ordinary civil action even though there was no judicial declaration of heirship. It was underscored therein that it was not denied by the parties that the plaintiff was the heir and lone legitimate child of the deceased, thus, he may institute an ordinary civil action although he had not been judicially declared as an heir.

Evidently, the Court applied the first exception to the Established Rule wherein an ordinary civil action may be instituted involving the declaration of heirs when the parties voluntarily submit the issue to the trial court and already presented their evidence regarding the issue of heirship. As discussed above, the plaintiff in *Cabuyao* presented evidence regarding his heirship in the ordinary civil action and it was neither denied nor disputed by defendants; thus, it was allowed by the Court despite the lack of a special proceeding on the declaration of heirship.

In *De Vera v. Galauran (De Vera)*,^[61] the plaintiffs therein also instituted an ordinary civil action for annulment of deed of sale which was instituted by the heir of the deceased. They alleged in their complaint that they were the legitimate heirs and children of the deceased who inherited from the deceased. The defendant then filed a demurrer, which is presumed to have been filed after the plaintiffs presented their evidence, alleging that the plaintiffs had no cause of action because they have not been declared legal heirs in a special proceeding. The Court sided with the plaintiffs that they may institute an ordinary civil action to assert their rights as heirs. Patently, the Court again applied the first exception to the Established Rule because there was no dispute as to the fact that the plaintiffs were indeed heirs of the decedent, which was duly established. Hence, a separate special proceeding was not required.

In *Morales v. Yañez (Morales)*,^[62] the plaintiffs instituted an ordinary civil action for the recovery of the possession of three (3) parcels of land, which formed part of their inheritance from the decedent. In said case, there was no dispute that the lands belonged to the decedent, who died intestate, and that the plaintiffs were the surviving illegitimate children of the decedent. The defendant argued that there must first be a separate special proceeding to settle the estate of the decedent and have a judicial declaration of heirs. The Court, however, disagreed with the argument because while a formal declaration or recognition or enforcement of such right needs judicial confirmation in proper proceedings, it has often enforced or protected such rights from encroachments made or attempted before the judicial declaration. Which can only mean that the heir acquired hereditary rights before judicial declaration in testate or intestate proceedings.

Verily, the Court applied the first exception of the Established Rule and allowed the ordinary civil action to have a declaration of heirs because it is an undisputed fact, as established by evidence, that the plaintiffs were indeed the heirs of the decedent. To require a separate special proceeding for the declaration of heirs would be inconsequential because it will only reiterate the fact of heirship earlier established in the ordinary civil action.

Similarly, in *Bonilla v. Barcena (Bonilla)*,^[63] the Court allowed the substitution of the children of the decedent, as the heirs of the latter, in an ordinary civil action since there was no dispute that they are indeed the children of the decedent. To require a special proceeding for that purpose would be unnecessary.

In *Baranda v. Baranda (Baranda)*,^[64] the petitioners therein, as heirs of the decedent, filed an ordinary civil action for the annulment of sale and recovery of lots. However, no special proceeding for the settlement of the decedent's estate was instituted. The Court held that it was not disputed that the decedent died intestate without any direct descendants or ascendants and that petitioners were the children of the deceased siblings of the

decendent. Accordingly, they were the legitimate intestate heirs of the decendent. As no special proceeding for the settlement of the decendent's estate was instituted, the same declaration of heirs may be made in the ordinary civil action as their fact of heirship was undisputed by the evidence presented. Hence, the Court again applied the first exception of the Established Rule and held that petitioners had legal standing in the ordinary civil action.

Likewise, in *Pacaña-Contreras v. Rovila Water Supply, Inc. (Pacaña)*,^[65] and *Heirs of Gregorio Lopez v. Development Bank of the Philippines (Lopez)*,^[66] the parties voluntarily presented evidence regarding the declaration of heirship in the ordinary civil action and such fact was not disputed. In effect, the Court applied the first exception in the Established Rule that the declaration of heirship may be made in the ordinary civil action for the purpose of practicality.

In *Capablanca v. Heirs of Pedro Bas (Capablanca)*,^[67] the petitioner was the heir of Norberto Bas, who was the transferee of a parcel of land that originated from the land of Pedro Bas. Petitioner filed an ordinary civil action for cancellation of title because her lot, which was inherited from Norberto Bas, was wrongfully claimed and registered by the heirs of Pedro Bas. The respondents therein argued that petitioner cannot institute an ordinary civil action because there must first be a special proceeding to establish that petitioner was also an heir of Pedro Bas. The Court ruled that:

In this case, there is no necessity for a separate special proceeding and to require it would be superfluous considering that petitioner had already presented evidence to establish her filiation and heirship to Norberto, which respondents never disputed.^[68] (emphasis supplied)

Fittingly, since the petitioner therein already presented evidence in the ordinary civil action that she was the heir of Norberto Bas, not Pedro Bas, and such fact was not disputed, a special proceeding for declaration of heirship would be superfluous.

In *Portugal v. Portugal-Beltran (Portugal)*, petitioners filed an ordinary civil action for annulment of title because they claimed to be the lawful heirs of decendent Portugal while respondent was not related to the said decendent. The parties presented their evidence with the trial court regarding the issue on the declaration of heirship. The trial court initially dismissed the complaint because a special proceeding for the declaration of heirship was not filed by petitioners. On appeal, the Court held that the ordinary civil action can tackle the issue on declaration of heirship. It discussed the Established Rule on declaration of heirship and stated that the first exception to the said rule should have been applied, hence, the said issue can be undertaken in the ordinary civil action, to wit:

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 proceeding. 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.^[69]

Aptly, a special proceeding for the declaration of heirs was not anymore required because the parties already presented their evidence regarding the issue of heirship as early as the pre-trial in the ordinary civil action. Further, a special proceeding would simply be impractical as the case only involves one parcel of land. Indeed, the Court correctly applied the first exception in the Established Rule.

C. Second Exception to the Rule

In *Quion v. Claridad (Quion)*,^[70] the petitioners were the children of the decendent from his first marriage. Upon the death of the decendent intestate, the petitioners instituted intestate proceedings for the settlement and

distribution of the estate. However, they concealed to the trial court the fact that the decedent had a second marriage from whom he had two (2) children. The proceedings were terminated and the properties were adjudicated to the petitioners. More than two (2) years later, the respondents, children of the second marriage, filed an ordinary civil action to be declared entitled to one-half (1/2) of the properties of the decedent. The Court allowed the respondents to file the ordinary civil action even though the intestate proceeding had already been terminated. It applied the second exception to the Established Rule that an ordinary civil action involving the declaration of heirship can be instituted when the special proceeding for such had been closed and terminated. The Court underscored that the children in the second marriage of the decedent were co-owners of the properties, hence, they may institute the ordinary civil action even as the special proceeding for declaration of heirs was already terminated.

In *Guilas v. Judge of the Court of First Instance of Pampanga (Guilas)*,^[71] the decedent died with a will but did not include her adopted daughter, the petitioner therein, as one of the heirs. The special proceeding for the probate of the will and settlement of the estate was instituted. Upon the payment of the claims against the estate and issuance of the project of partition, the trial court declared that the testate proceedings were closed and terminated. Four (4) years later, the petitioner instituted an ordinary civil action for annulment of the partition, arguing that she was a lawful heir of the decedent. The Court held that petitioner could have filed a motion in the testate proceeding even though it was closed and terminated, to wit:

The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. The finality of the approval of the project of partition by itself alone does not terminate the probate proceeding (*Timbol vs. Cano*, 1 SCRA 1271, 1276, L-15445, April 29, 1961; *Siguiong vs. Tecson*, 89 Phil., pp. 28-30). As long as the order of the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated (*Siguiong vs. Tecson*, *supra.*); because a judicial partition is not final and conclusive and does not prevent the heir from bringing an action to obtain his share, provided the prescriptive period therefor has not elapsed (*Mari vs. Bonilla*, 83 Phil., 137). The better practice, however, for the heir who has not received his share, is to demand his share through a proper motion in the same probate or administration proceedings, or for re-opening of the probate or administrative proceedings if it had already been closed, and not through an independent action, which would be tried by another court or Judge which may thus reverse a decision or order of the probate on intestate court already final and executed and re-shuffle properties long ago distributed and disposed of (*Ramos vs. Ortuzar*, 89 Phil., 730, 741-742; *Timbol vs. Cano*, *supra.*; *Jingco vs. Daluz*, L-5107, April 24, 1953, 92 Phil. 1082; *Roman Catholic vs. Agustines*, L-14710, March 29, 1960, 107 Phil., 445, 460-461).^[72]

Nevertheless, the Court allowed the continuance of the ordinary civil action considering that petitioner was indeed a lawful heir of the decedent and, as such, can assert her rights as an heir in the said ordinary civil action.

Established Rule consistently
applied by the court

As extensively discussed above, the Court has consistently applied the Established Rule. In *Litam*, *Solivio*, *Pimentel*, *Ypon*, *Yaptinchay*, and *Reyes*, the Court applied the general rule that there must be a declaration of heirs in a special proceeding to establish right or status as an heir. It did not allow an ordinary civil action for the same because the exceptions to the rule were not present. Either there was still a pending special proceeding for declaration of heirs or the parties did not voluntarily present evidence regarding the issue of heirship; thus, the said issue was disputed. Hence, there was a necessity to institute a special proceeding and not merely an ordinary civil action for declaration of heirship.

On the other hand, in *Cabuyao*, *De Vera*, *Morales*, *Bonilla*, *Baranda*, *Pacaha*, *Lopez*, *Capablanca* and *Portugal*, the

declaration of heirs was allowed in an ordinary civil action because the first exception to the Established Rule was present. The parties in those cases voluntarily presented evidence regarding the declaration of heirs in the ordinary civil action and there was no dispute as to who the heirs of the decedent are. For the purpose of practicality and expediency, an ordinary civil action will suffice for the declaration of heirs because instituting a separate special proceeding will only prolong litigation, which will tackle the same evidence and issue.

In cases which applied the first exception of the Established Rule, the plaintiffs were the rightful heirs of the decedent. However, for one reason or another, a third party fraudulently takes the decedent's property to the prejudice of the heir. When an heir institutes an ordinary civil action which tackles the declaration of heirs, the parties may be allowed to voluntarily present evidence to establish the said declaration. The trial courts allow an heir to prove the status of heirship in the ordinary civil action, instead of filing a separate special proceeding, because he or she must be immediately allowed to protect and enforce rights against fraudulent third persons who attempt to take his or her inherited property. In that instance, a special proceeding is not the practical and timely solution anymore; rather, an ordinary civil action is allowed to resolve the issue of declaration of heirs. If the issue is resolved harmoniously, then the declaration of heirship in the ordinary civil action is upheld; otherwise, when the issue regarding the declaration of heirship is greatly contested and disputed, then a separate special proceeding must be instituted.

Notably, in the cases of *Cabuyao*, *De Vera*, *Morales*, *Bonilla*, *Baranda*, *Pacaña*, *Lopez*, *Capablanca* and *Portugal*, the plaintiffs were the heirs of the decedent and they filed ordinary civil actions against defendants who were not heirs of the decedent, or third parties who wrongfully claimed the decedent's property. In my view, the Court recognized the determination of heirship in the ordinary civil action to protect the estate against wrongful claims before the estate is lawfully distributed. Stated differently, the ordinary civil actions therein were allowed in order to preserve the estate of the decedent in favor of the rightful heirs.

However, these cases do not declare that the general rule – a declaration of heirship shall be established in a special proceeding – is abrogated. Despite allowing the issue of heirship in an ordinary civil action, they did not forestall the institution of a special proceeding for the very purpose of the declaration of heirship. Verily, the issue of heirship in these ordinary civil actions is without prejudice to the institution of a separate special proceeding for the rightful purpose of resolving the declaration of heirship.^[73] Again, the issue of heirship in these ordinary civil cases were allowed in favor of the plaintiff-heirs so that they would be able to preserve the estate of decedent against the wrongful claims of third parties until such time that the declaration of heirs is finally and conclusively settled in a separate special proceeding.

Finally, in *Quion*, the Court applied the second exception in the Established Rule. The special proceeding for the declaration of heirs in those cases were already closed and terminated. Nevertheless, the Court allowed the parties to institute an ordinary civil action involving the declaration of heirs and to assert their lawful rights as heirs of the decedent. In that manner, the rights of the heirs which were transmitted from the moment of death of the decedent are respected even in an ordinary civil action.

Verily, the Established Rule is well-encompassing and rational. It imposes the general rule that a special proceeding must be instituted for the declaration of heirship. At the same time, it allows an exception that an ordinary civil action may be instituted for the declaration of heirship, without a corresponding special proceeding, for the sake of practicality when both parties voluntarily present evidence regarding heirship and there is no longer dispute as to who the heirs of the decedent are. Further, when the special proceeding has been closed and terminated, an ordinary civil action may be instituted involving the declaration of heirs.

Indeed, the Established Rule is in accordance with substantive law that successional rights, properties and

obligations are transmitted to the heirs from the moment of the death of the decedent and that remedial law governs the manner or method by which the transmission of these rights are enforced. It is flexible and accommodating because it enforces the provisions of the Rules of Court requiring a special proceeding for the declaration of heirs and, at the same time, allows exceptions when ordinary civil action may be instituted involving the same issue.

It is my view that the Established Rule regarding the declaration of heirs is balanced and satisfactory. Thus, I see no practical necessity for setting aside or modifying such rule.

Problems arising from the Proposed Rule

On the other hand, the Proposed Rule by the ponencia significantly modifies the said established rule. Instead of having a general rule with exceptions, the ponencia proposes that there should only be one rule: "Unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the nullity of a deed, instrument, or conveyance of property, or any other action in the enforcement of their successional rights, without the necessity of a prior and separate judicial declaration of their status as such." [74]

It practically sets aside the general rule in the Established Rule that there must be a special proceeding for the declaration of heirs. Rather, it mandates that such special proceeding shall be voluntary or discretionary on the part of the compulsory and intestate heirs. Only when the parties file a special proceeding for such purpose will the court acknowledge such declaration of heirs in special proceedings. In all other case, the heirs are free to institute any and all ordinary civil action and they can raise whatever issue regarding the declaration of heirship in said ordinary civil action.

I believe that if the Court adopts this Proposed Rule, heirs in intestate succession will not anymore file any special proceeding for the declaration of heirs as they are free, without any restriction, to file ordinary civil actions to establish the declaration of heirs. Ordinary civil actions are undemanding, do not require publication, and may be instituted in several trial courts depending on the venue. Indeed, intestate heirs will be disincentivized to file any special proceeding for the declaration of heirs because they are uninhibited to resort to ordinary civil action, regardless whether or not the issue on heirship is highly disputed. The provisions on intestate proceeding under the Rules of Court will virtually become useless because intestate heirs are not obligated anymore to file a special proceeding; instead, they shall resort to unconstrained institution of ordinary civil actions seeking for the declaration of heirship, irrespective of the complexity, disagreement, and misunderstanding regarding such issue of heirship by the parties.

The problem with the unrestricted filing of ordinary civil action for the declaration of heirs, due to its nature, would be the development of inconsistent decisions of the trial courts. [75] As discussed above, several ordinary civil actions may be instituted in different trial courts, provided they do not violate the rule against forum shopping. There is nothing in the Rules of Court that prevent the heirs from instituting several and simultaneous ordinary civil actions, especially if said actions refer to different venues.

For example, a decedent dies intestate and he leaves several real properties in Manila, Makati, and Taguig City. Some of the intestate heirs may execute an extrajudicial affidavit of settlement, which exclude other intestate heirs. As a result, the certificates of title of the properties of the decedent are transferred to said heirs. If we follow the Proposed Rule, one of the excluded heirs may simply file an ordinary civil action, such as action for reconveyance, in the RTC of Manila City, where the property is located. The other excluded heir may also file an ordinary civil action for annulment of title in the RTC of Makati City, where he resides, which includes a

declaration of heirs. Finally, a third excluded heir may file an ordinary civil action for partition in the RTC of Taguig City, where one of the properties of the decedent is located, which also involves the issue of declaration of heirs. These three (3) ordinary civil actions are allowed because they involve different subject matters, i.e., the properties are located in different localities. The conundrum arises when the RTC of Manila, Makati and Taguig City, regardless of the highly disputed issue of heirship, promulgates conflicting decisions regarding the ordinary civil actions.

Despite the complexity of the issue of heirship and the disputed nature of such issue in the above example, the ordinary civil actions will be allowed in the Proposed Rule, which may result into contradictory decisions; instead of having only one special proceeding for the declaration of heirship to resolve the disputed issue on heirship. While judgment in the ordinary civil action only binds the parties in the case, the conflicting decisions, once final and executory, will constitute *res judicata* and will lead to more confusion as to who the rightful heirs of the decedent are.

On the other hand, if we follow the Established Rule, a special proceeding for the declaration of heirship shall still be the general rule, which will uniformly thresh out such disputed issue. A special proceeding involving the declaration of heirs, particularly, the settlement of an estate, is filed only in one trial court, to the exclusion of all others. The reason for this provision of the law is obvious. The settlement of the estate of a deceased person in court constitutes but one proceeding. For the successful administration of that estate, it is necessary that there should be but one responsible entity, one court, which should have exclusive control of every part of such administration. To entrust it to two or more courts, each independent of the other, would result in confusion and delay.[76] This is precisely why the general rule states that the declaration of heirs should be instituted in a special proceeding – to have uniformity on the ruling with respect to the declaration of heirs and to avoid conflicting decisions.

Nevertheless, as stated above, the Established Rule still allows ordinary civil action for declaration of heirship on the basis of practicality – when both parties voluntarily present evidence regarding the declaration of heirship and there is no dispute regarding such issue. Again, this rule strikes a balance between substantive law and remedial: by mandating a special proceeding for declaration of heirs and allowing, in exceptional circumstances, an ordinary civil action regarding the same issue.

For the purpose of uniformity, orderliness, and stability, I submit that the Established Rule must be upheld.

Application of the Established
Rule in this case; action for
partition

The ponencia states:

In its Resolution dated July 15, 2014, the RTC denied for lack of merit petitioner [Treyes]' second Motion to Dismiss. Nevertheless, the RTC held that it did not acquire jurisdiction over the Complaint's third cause of action, i.e., partition:

xxx A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self Adjudication; 2) Reconveyance (3) Partition; and 4) Damages. Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.[77]

The trial court erred in its ruling that it had no jurisdiction over the action for partition. As aptly pointed out in the ponencia -

Hence, as correctly held by the RTC in its Resolution dated August 15, 2014, the RTC has jurisdiction over the subject matter of the Complaint considering that the law confers upon the RTC jurisdiction over civil actions^[78] which involve the title to, or possession of, real property or any interest therein, where the assessed value of the property involved exceeds P20,000.00 for civil actions outside Metro Manila, or where the assessed value exceeds P50,000.00 for civil actions in Metro Manila.^[79]

Private respondents' complaint should have been treated as a special civil action for partition. The said action for partition is a mode for the settlement of the estate of the decedent and where a declaration of heirship may be determined.^[80] They alleged that they are all brothers and sisters while petitioner is their brother-in-law. The copies of the birth certificates of private respondents and Rosie were attached as Annexes "A to H" of their complaint to prove the said assertion.^[81] They alleged that petitioner, in gross bad faith and with malicious intent, falsely and fraudulently caused the properties of Rosie to be transferred to his own name to the exclusion of private respondents by executing two (2) affidavits of self-adjudication.^[82]

Clearly, private respondents presented proof regarding the declaration of heirship in the pending action, particularly their birth certificates, to prove that they are the siblings of the decedent. Rule 132, Section 23 of the Rules of Court states that documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. Entries in official records made in the performance of his duty by a public officer are prima facie evidence of the facts therein stated. The evidentiary nature of such document must, therefore, be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity.^[83]

As aptly discussed by the ponencia, petitioner never dispute the fact that private respondents are indeed the brothers and sisters of the decedent, and are legal heirs, viz.:

To be sure, upon meticulous perusal of the petitioner's pleadings, it is clear that the status of the private respondents as siblings of Rosie was not even seriously refuted by petitioner Treyes. He also does not make any allegation that the birth certificates of the private respondents are fake, spurious, or manufactured. All he says is that there must first be a declaration in a special proceeding. Clearly, therefore, it cannot be said in the instant case that the private respondents were not able to present evidence as to their status as heirs and that the determination of their status as heirs was seriously contested by the petitioner.^[84]

As the parties voluntarily presented evidence regarding the declaration of heirs and such issue is not disputed anymore, then the first exception of the Established Rule is applicable. An ordinary civil action may be instituted for the declaration of heirs, despite the lack of a special proceeding, for the sake of practicality. To require private respondents to institute a separate special proceeding for the declaration of heirs would be a superfluity because they have already presented the same evidence and resolved the same issue regarding the heirship in this present ordinary civil action.

Hence, applying the Established Rule, the same result espoused by the ponencia would be achieved because the RTC properly denied petitioner's second motion to dismiss the civil action; as a result, the declaration of heirship should be allowed in the present case.

More importantly, a reading of the complaint would show that the ultimate objective sought by the private respondents was not the annulment of the extrajudicial affidavit of settlement; rather, they sought for the partition of the inherited property pursuant to their successional rights. Allegations 1, 7, 8 and 9 in the complaint supports the claim that there is co-ownership in the subject properties and private respondents seek the partition thereof. Thus, the complaint cannot be treated as an action for annulment of title; instead, it must be treated as an action for partition.

As stated in the complaint, private respondents claimed that they are indubitably co-owners of the properties of Rosie by virtue of being co-heirs. Accordingly, it is necessary to delineate the specific shares of each of the co-owners of the properties of Rosie's estate to avoid further conflict as to the use and disposition of the same and the specific shares of the co-heirs must be determined and partitioned.[85] Private respondents prayed for the following reliefs:

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

a.)

Declaring the Affidavit of Self-Adjudicated dated September 2, 2008 (Annex "X") and May 19, 2011 (Annex "Y") as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;

b.)

Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;

c.)

Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;

d.)

Ordering the defendant to pay plaintiffs moral damages of not less than P500,000.00 and exemplary damages of not less than P500,000.00.

e.)

Ordering the defendant to pay plaintiffs attorney's fees of P200,000.00 and litigation expenses of not less than P150,000.00.

Other reliefs as may be just and equitable under the premises are also prayed for.[86] (emphasis supplied)

As stated in *Montero v. Montero, Jr.*,[87] the nature of a complaint is determined, not by the caption of the same, but by the allegations therein and relief prayed for, viz.:

Hence, the Court has held that even if the action is supposedly one for annulment of a deed, the nature of an action is not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. Where the ultimate objective of the plaintiffs is to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof.

Thus, because the ultimate relief sought by private respondents was the partition of the decedent's properties, as indicated in the third relief sought, then the complaint should be treated as an action for partition. The first and second reliefs sought, which are the annulment of petitioner's Affidavits of Self-Adjudication and the reconveyance of the properties, are simply consequences of the third relief – the partition of the properties. Article 496 of the Civil Code states that "Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code."

For actions for partition, the subject matter is two-phased. In *Bagayas v. Bagayas*,[88] the Court ruled that partition is at once an action for: (1) declaration of co-ownership; and (2) segregation and conveyance of a

determinate portion of the properties involved. Thus, in a complaint for partition, the plaintiff seeks, first, a declaration that he/she is a co-owner of the subject properties, and second, the conveyance of his/her lawful share.[89]

Further, it was explained by the Court in *Heirs of Feliciano Yambao v. Heirs of Hermogenes Yambao*,[90] that an action for partition cannot be considered a collateral attack on the certificates of title of the heir that excluded the other heirs in the extrajudicial settlement of the estate; rather, it is a proper action because the excluded heirs are seeking to enforce their rights as co-owners of the inherited properties, to wit:

There is likewise no merit to the claim that the action for partition filed by the heirs of Hermogenes amounted to a collateral attack on the validity of OCT No. P-10737. The complaint for partition filed by the heirs of Hermogenes seeks first, a declaration that they are a co-owners of the subject property, and second, the conveyance of their lawful shares. The heirs of Hermogenes do not attack the title of Feliciano; they alleged no fraud, mistake, or any other irregularity that would justify a review of the registration decree in their favor. Their theory is that although the subject property was registered solely in Feliciano's name, they are co-owners of the property and as such is entitled to the conveyance of their shares. On the premise that they are co-owners, they can validly seek the partition of the property in co-ownership and the conveyance to them of their respective shares.[91] (emphasis supplied; citation omitted)

Evidently, as an action for partition seeks the declaration of co-ownership, the issue on the declaration of heirship will indubitably be raised in the said action. Thus, it was proper for private respondents to raise the issue of declaration of heirship in the ordinary civil action because it is precisely the issue to be determined in the said action for partition. As petitioner did not contest such evidence regarding the declaration of heirship, then such fact is deemed admitted. Section 11, Rule 8 of the Revised Rules of Civil Procedure states:

Section 11. Allegations not specifically denied deemed admitted. — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath.

Manifestly, the declaration of heirship is deemed admitted and undisputed in this action; a separate special proceeding is not required anymore. The annulment of petitioner's title over the properties and the reconveyance of the same are ventilated in the action for partition. Accordingly, the action for partition shall determine whether private respondents, as legal heirs of Rosie, are entitled to one-half ($\frac{1}{2}$) of the portion of the decedent's estate.

WHEREFORE, I concur with the ponencia to DENY the petition. However, I dissent that the Established Rule cited in *Ypon*, *Yaptinchay*, *Portugal*, and *Reyes* should be abandoned in lieu of the ponencia's Proposed Rule.

[1] Majority Opinion, p. 29.

[2] *Rollo*, pp. 89-90.

[3] *Id.* at 94.

[4] *Id.* at 96.

[5] *Id.* at 97.

[6] *Id.* at 98-99.

[7] 713 Phil. 570 (2013).

[8] 574 Phil. 245 (2008).

[9] 363 Phil. 393 (1999).

[10] 504 Phil. 456 (2005).

[11] Article 712. Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription.

[12] Tolentino, Civil Code of the Philippines, Volume III, p. 15.

[13] Tolentino, Civil Code of the Philippines, Volume III, pp. 15-16.

[14] Tolentino, Civil Code of the Philippines, Volume III, pp. 16.

[15] Caguioa, Comments and Cases on Civil Law, 1970 Third Edition, Volume III, pp. 21-22.

[16] Rivera v. Court of Appeals, 257 Phil. 174, 180 (1989).

[17] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[18] Tolentino, Civil Code of the Philippines, Succession, Vol. III, p. 2.

[19] Caguioa, Comment and Cases on Civil Law 1970 Third Edition, Sec. 17, p. 2.

[20] Tolentino, Civil Code of the Philippines, Succession, Vol. III, p. 9.

[21] Tolentino, Civil Code of the Philippines, Property, Vol. II, p. 452.

[22] Bustos v. Lucero, 81 Phil. 640, 650 (1948).

[23] Art. 496. Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

Art. 830. No will shall be revoked except in the following cases:

(1) By implication of law; or

(2) By some will, codicil, or other writing executed as provided in case of wills; or

(3) By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, cancelled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.;

Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.

The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution;

Art. 881. The appointment of the administrator of the estate mentioned in the preceding article, as well as the manner of the administration and the rights and obligations of the administrator shall be governed by the Rules of Court;

Art. 1057. Within thirty days after the court has issued an order for the distribution of the estate in accordance with the Rules of Court, the heirs, devisees and legatees shall signify to the court having jurisdiction whether they accept or repudiate the inheritance.

If they do not do so within that time, they are deemed to have accepted the inheritance;

Art. 1058. All matters relating to the appointment, powers and duties of executors and administrators and concerning the administration of estates of deceased persons shall be governed by the Rules of Court.

[24] *Acap v. Court of Appeals*, 321 Phil. 381, 390 (1995).

[25] *Id.*

[26] Rules of Court, Art. 838.

[27] Rule 76. Allowance or Disallowance of Will.

[28] Rule 74. Summary Settlement of Estate.

Section 2. Summary settlement of estate of small value. — Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Court of First Instance having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interest persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, and without delay, to grant, if proper, allowance of the will, if any there be, to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are of lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgments made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office.

[29] Rule 78. Letters Testamentary and of Administration, When and to Whom Issued.

Section 6. When and to whom letters of administration granted. — If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death

of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

[30] *Suiliong & Co. v. Chio-Taysan*, 12 Phil. 13, 19-20 (1908).

[31] Rule 74. Summary of Settlement of Estate

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

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

[32] Art. 496. Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

[33] Rule 1. General Provisions

Section 3. Cases governed. – These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong,

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law,

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right or a particular fact.

[34] *Heirs of Yaptinchay v. Del Rosario*, supra note 9, at 398-399.

[35] Rule 73. Venue and Process

Section 1. Where estate of deceased persons settled. — If the decedents is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The

court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

[36] Id.

[37] 5 Phil. 436 (1905).

[38] Id. at 439-441.

[39] Rule 74. Summary Settlement of Estate

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

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

[40] *Gianan v. Imperial*, 154 Phil. 705, 712-713 (1974).

[41] *Macias v. Kim*, 150-A Phil. 603, 611 (1972).

[42] *Reyes v. Ysip*, 97 Phil. 11, 13 (1955).

[43] Section 1, Rule 90.

[44] *V. Francisco*, *The Revised Rules of Court in the Philippines*, V-B, 359 (1970).

[45] 16 Phil. 489 (1910).

[46] *Caguioa*, *Comments and Cases on Civil Law, Civil Code of the Philippines*, 1970 Third Edition, Volume III, p. 406.

[47] Rule 91, Rules of Court.

[48] *Tolentino*, *Civil Code of the Philippines*, Volume III, pp. 504-505.

[49] Section 1, Rule 91 of the Rules of Court states:

Section 1. When and by whom petition filed. — When a person dies intestate, seized of real property in the Philippines, leaving no heir or person by law entitled to the same, the Solicitor General or his representative in behalf of the Republic of the Philippines, may file a petition in the Court of First Instance of the province where

the deceased last resided or in which he had estate, if he resided out of the Philippines, setting forth the facts, and praying that the estate of the deceased be declared escheated.

[50] Section 3, Rule 91 of the Rules of Court states:

Section 3. Hearing and judgment. — Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the person died intestate, seized of real or personal property in the Philippines, leaving no heir or person entitled to the same, and no sufficient cause being shown to the contrary, the court shall adjudge that the estate of the deceased in the Philippines, after the payment of just debts and charges, shall escheat; and shall, pursuant to law, assign the personal estate to the municipality or city where he last resided in the Philippines, and the real estate to the municipalities or cities, respectively, in which the same is situated. If the deceased never resided in the Philippines, the whole estate may be assigned to the respective municipalities or cities where the same is located. Shall estate shall be for the benefit of public schools, and public charitable institutions and centers in said municipalities or cities.

The court, at the instance of an interested party, or on its own motion, may order the establishment of a permanent trust, so that the only income from the property shall be used.

[51] *Heirs of Gabatan v. Court of Appeals*, 600 Phil. 112, 126 (2009).

[52] *Portugal v. Porlugal-Beltran*, 504 Phil. 456, 469 (2005).

[53] See *Heirs of Fabillar v. Paller*, G.R. No. 231459, January 21, 2019.

[54] See *Portugal v. Porlugal-Beltran*, *supra* note 10.

[55] Majority Opinion, p. 18.

[56] 100 Phil. 364 (1956).

[57] 261 Phil. 231 (1990).

[58] *Supra* note 9.

[59] *Supra* note 8 at 253-254.

[60] 95 Phil. 614 (1954).

[61] 67 Phil. 213 (1939).

[62] 98 Phil. 677 (1956).

[63] 163 Phil. 516 (1976).

[64] 234 Phil. 64 (1987).

[65] 722 Phil. 460 (2013).

[66] 747 Phil. 427 (2014).

[67] 811 Phil. 861 (2017).

[68] *Id.* at 875-876.

[69] *Supra* note 10, at 470.

[70] 74 Phil. 100 (1943).

[71] 150 Phil. 138 (1972).

[72] Id. at 144-145.

[73] See *Acap v. Court of Appeals*, supra note 24, where it was held that in spite of the dismissal of the ordinary civil action, which tackled the issue of extrajudicial declaration of heirship, such dismissal is without prejudice to the filing of the proper case to establish the legal mode by which he claims to have acquired ownership of the land in question.

[74] Majority Opinion, p. 19.

[75] In *Spouses Maraño v. Pryce Gases, Inc.*, 757 Phil. 425,430 (2015), the Court emphasized that the rendering conflicting decisions should be avoided for the orderly administration of justice.

[76] *Macias v. Uy Kim*, supra note 41, at 611.

[77] Majority Opinion, p. 4.

[78] Rule 1, Section 3(a) of the Revised Rules of Court provides: Cases governed. — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, (1a, R2)

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action. (n)

[79] Majority Opinion, p. 11.

[80] Rule 69, Section 1. Complaint in action for partition of real estate. — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

[81] Rollo, pp. 89-90.

[82] Id. at 94.

[83] *Ombudsman v. Peliño*, 575 Phil. 221, 247 (2008); citation omitted.

[84] Majority Opinion, pp. 27-28.

[85] Rollo, p. 97.

[86] Id. at 98-99.

[87] G.R. No. 217755, September 18, 2019.

[88] 718 Phil. 91 (2013).

[89] *Agarrado v. Librando-Agarrado*, G.R. No. 212413, June 6, 2018, 864 SCRA 582, 592.

[90] 784 Phil. 538 (2016).

[91] Id. at 544-545.

CONCURRING OPINION

ZALAMEDA, J.:

Petitioner filed the instant petition before this Court, adamant that the regular court is without jurisdiction over the complaint filed by the respondents for lack of a prior determination of heirship by a special court. In denying the petition, the ponencia, citing Article 777 of the New Civil Code and a myriad of jurisprudence, debunked petitioner's view. It concluded that the legal heirs, like herein respondents, have the right to file the instant suit arising out of their right of succession, without the need for a separate prior judicial declaration of heirship, provided only that there is no pending special proceeding for the settlement of the decedent's estate.[1]

Contrary to petitioner's posture, a prior determination of heirship in a special proceeding is not a condition sine qua non in the institution of an ordinary civil proceeding involving heirs. This jurisprudence is not novel. The ponencia pointed that the Court en banc made it clear, as early as the 1939 case of *De Vera v. Galauran*,[2] that "unless there is a pending special proceeding for the settlement of the estate of the deceased person, the legal heirs may commence an ordinary action arising out of a right belonging to the ancestor, without the necessity of a previous and separate judicial declaration of their status as such." [3]

Following long-settled precedents, the ponencia correctly held that the legal heirs, like herein respondents, are authorized, by operation of law and from the moment of the decedent's death, to fully protect their successional rights, without having to first, go through the rigors of proving their filiation or relation to the decedent in a separate special proceeding for that purpose. There is indeed clearly no judicial declaration of heirship necessary for an heir to assert his or her right to the property of the deceased, as what the Court emphasized in the fairly recent case of *Capablanca v. Heirs of Bas (Capablanca)*. [4] The putative or alleged heirs are to be considered real parties-in-interest to file the ordinary civil actions for cancellation of a deed or instrument and reconveyance of property, despite lack of a previous judicial declaration of heirship in an appropriate civil proceeding, for as long as they can show preponderant proof of their relationship or filiation to the deceased. This is because they are merely asserting their successional rights on the property, which are transmitted to them from the moment of death of the decedent, in accordance with Article 777 of the New Civil Code.

Although said rule may have endured the test of time, the same is still not firmly cast in stone. Indeed, this rule has not been immune to attack. There have been a number of cases where the ordinary civil actions filed by the putative heirs were ultimately dismissed for lack of a prior declaration of heirship in a special proceeding. These conflicting rulings of the Court on this issue became the anchor of petitioner's steadfast stance for the dismissal of the complaint below. As the confusion brought to fore is capable of repetition if left unresolved, the ponente is thus right to use this opportunity to rid the jurisprudence of such obscurity, once and for all.

It is an equally long-standing rule that the determination of who the legal heirs of the deceased are must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property.[5] And it is for good reasons. As elucidated by the Court in *Intestate Estate of Wolfson v. Testate Estate of Wolfson*[6]:

Paraphrasing the jurisprudence on this score, the salutary purpose of the rule is to prevent confusion and delay. It is not inserted in the law for the benefit of the parties litigant but in the public interest for the better administration of justice, for which reason the parties have no control over it. Consequently, every challenge to the validity of the will, any objection to its authentication, every demand or claim by any heir, legatee or party in interest in intestate or testate succession must be acted upon and decided within the same special proceedings, not in a separate action, and the same judge having jurisdiction in the administration of the estate should take cognizance of the question raised, for he will be called upon to distribute or adjudicate the property

to the interested parties. WE stressed that the main function of a probate court is to settle and liquidate the estates of the deceased either summarily or through the process of administration; and towards this end the probate court has to determine who the heirs are and their respective shares in the net assets of the estate. Section 1 of Rule 73, speaking as it does of "settlement of the estates of the deceased," applies equally to both testate and intestate proceedings. And the conversion of an intestate proceedings into a testate one is "entirely a matter of form and lies within the sound discretion of the court. (Emphasis supplied.)

The rationale for the doctrine that the declaration of heirship must be made in a special proceeding, and not in an independent civil action,[7] cannot be disregarded. A prior special proceeding must, in some cases, be instituted for the declaration of heir precisely because it seeks to establish the parties' right or status as an heir. This cannot be done in an ordinary civil action considering that it serves a different purpose, i.e., the enforcement or protection of rights.

While the rights of succession are transmitted from the moment of death of the decedent, there must still be some factual determination as to who the actual heirs of the decedent are, and their particular shares as provided by law. This orderly procedure should be followed to determine all the heirs of the decedent before the latter's properties may be rightfully distributed. Disregarding this orderly procedure may create confusion and disorder as this allows any heir to institute separate ordinary civil actions in different courts, which may eventually lead to inconsistent findings regarding the rights of the heirs. Indeed, while the rights of the heirs are transmitted from the moment of death of the decedent, pursuant to the provision of the Civil Code, the said transmission is still subject to the claims of administration and the inherited properties may still be subjected to the payment of debts, expenses, and obligations incurred by the decedent or the estate.[7]

Indeed, even if the right to assert a cause of action by an alleged heir, although he has not been judicially declared to be so, has been acknowledged in a number of subsequent cases,[8] the Court may still ultimately order the dismissal of a pertinent complaint if the heirs' claim of filiation turns out to be dubious or heavily in dispute. For instance, in the case of *Heirs of Yaptinchay v. Hon. Del Rosario, et al. (Yaptinchay)*,[9] cited by petitioner, the plaintiffs claimed to be the legal heirs of the deceased, but had not shown any proof of filiation or even a semblance of it – except the allegations that they were the legal heirs of the deceased. In affirming the dismissal of the complaint by the regular court, the Court emphasized that 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. The Court added that the determination of who the legal heirs of the deceased are 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.

The same notwithstanding, the Court has had a few occasions to make an exception to the rule that a declaration of heirship must be made in a special proceeding, such as when: (1) the parties in the civil case had voluntarily submitted the issue to the trial court, presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon; or (2) when a special proceeding had been instituted, but had been finally closed and terminated; hence, it cannot be re-opened.

In the case of *Portugal v. Portugal-Beltran*,[10] the Court allowed the proceeding for annulment of title to determine the status of the party therein as heirs even without a separate action for declaration of heirship, viz:

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 proceeding. 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 (Vide *Pereira v. Court of Appeals*, 174 SCRA 154 [1989]; *Intestate Estate of Mercado v. Magtibay*, 96 Phil. 383 [1955]), the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial x x x x

In the same vein, the Court allowed the exception to be applied in *Rebusquillo v. Sps. Gualvez, et al.*[11]:

Similar to Portugal, in the present case, there appears to be only one parcel of land being claimed by the contending parties as the inheritance from Eulalio. It would be more practical, as Portugal teaches, to dispense with a separate special proceeding for the determination of the status of petitioner Avelina as sole heir of Eulalio, especially in light of the fact that respondents spouses Gualvez admitted in court that they knew for a fact that petitioner Avelina was not the sole heir of Eulalio and that petitioner Salvador was one of the other living heirs with rights over the subject land. As confirmed by the RTC in its Decision, respondents have stipulated and have thereby admitted the veracity of the following facts during the pre-trial x x x x

Also, in *Heirs of Basbas v. Basbas*,[12] an ordinary civil action for annulment of title and reconveyance with damages was instituted by the petitioners, who were among the heirs of Severo Basbas. They alleged that therein respondents fraudulently executed an extrajudicial settlement of estate without including all the heirs so as to acquire and register the parcel of land of the decedent for themselves. The trial court granted the ordinary civil action based on its findings that respondents failed to include all the heirs in the extrajudicial settlement. However, the CA reversed the trial court, and ruled that the determination of filiation or heirship is only made in a special proceeding before a probate court. Upon appeal, the Court reinstated the findings of the trial court, holding that a separate special proceeding for declaration of heirship is no longer necessary in view of the uncontroverted evidence presented during trial in the ordinary civil action that the petitioners are the heirs of the decedent. The issue of heirship having been established, a special proceeding for such purpose would be superfluous.

More recently, in *Heirs of Fabillar v. Paller*,[13] the Court applied the exception stated in *Heirs of Ypon v. Ricaforte (Ypon)*[14] and ruled that a special proceeding for declaration of heirship was not necessary in said case, considering the parties had voluntarily submitted the issue of heirship before the trial court. The Court recognized that recourse to administration proceedings to determine the heirs is sanctioned only if there are good and compelling reasons; otherwise, the special proceeding may be dispensed with for the sake of practicality.

It should be stressed, however, that regular courts were allowed to dispose the issue of heirship in those cases only in the interest of justice, pragmatism, and expediency in view of the existence of the peculiar circumstances therein. I find analogous here is the situation in a testate or intestate proceedings where the question of ownership or title to the property generally cannot be passed upon by the special court unless there be compelling reason to do so. The Court was faced with such compelling reason in the case of *Coca v. Borromeo*,[15] and disposed the issue with a practical approach, thus:

The appellant contend that the lower court, as a probate court, has no jurisdiction to decide the ownership of the twelve-hectare portion of Lot No. 1112. On the other hand, the appellees or the heirs of Francisco Pangilinan counter that the lower court did not decide the ownership of the twelve hectares when it ordered their exclusion from the project of partition. So, the problem is how the title to the twelve hectares should be decided, whether in a separate action or in the intestate proceeding.

It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question.

In essence, it is a procedural question involving a mode of practice 'which may be waived' (Cunanan vs. Amparo, 80 Phil. 227, 232. Cf. Reyes vs. Diaz, 73 Phil. 484 re jurisdiction over the issue).

As a general rule, the question as to title to property should not be passed upon in the estate or intestate proceeding. That question should be ventilated in a separate action. (Lachenal vs. Salas, L-42257, June 14, 1976, 71 SCRA 262, 266). That general rule has qualifications or exceptions justified by expediency and convenience.

Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action Lachenal vs. Salas, supra).

Although generally, a probate court may not decide a question of title or ownership, yet if the interested parties are all heirs or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of 'third parties are not impaired, then the probate court is competent to decide the question of ownership (Pascual vs. Pascual, 73 Phil. 561; Alvarez vs. Espiritu, L-18833, August 14, 1965, 14 SCRA 892; Cunanan vs. Amparo, supra; 3 Morans Comments on the Rules of Court, 1970 Ed., p. 4731).

We hold that the instant case may be treated as an exception to the general rule that questions of title should be ventilated in a separate action.

Here, the probate court had already received evidence on the ownership of the twelve-hectare portion during the hearing of the motion for its exclusion from title inventory. The only interested parties are the heirs who have all appeared in the intestate proceeding.

As pointed out by the appellees, they belong to the poor stratum of society. They should not be forced to incur additional expenses (such as filing fees) by bringing a separate action to determine the ownership of the twelve-hectare portion.

With all the foregoing being said, the varying rulings on the matter should now be reconciled, harmonized, and clarified to avoid further confusions and disagreements. There should be no question by now that absent an exceptional reason to do so, it would be an excess of jurisdiction for the regular court to nonchalantly thresh out the issue of heirship in an ordinary civil action.

The purpose of an ordinary civil action is the enforcement or protection of a right, or the prevention or redress of a wrong.[16] The ultimate aim of such ordinary civil action is only to recover the ownership and possession of the property of the decedent, for the benefit of the estate and subsequent distribution thereof in accordance with law, or to declare the nullity of deeds, instruments and conveyances. Since the regular court's authority is confined only to the resolution of the rights and liabilities of the parties, it can only declare who the rightful owner is, not who the heirs are. As Justice Marvic Leonen fittingly expressed, the mere fact that one is declared the rightful owner by the regular court does not necessarily come with it the declaration of heirship, the same being proper only in a special proceeding.[17]

To be sure, a regular court must refrain from delving into the issue of heirship for any purpose other than to determine the legal standing of the putative heirs to file the civil action, and the result of which not be a bar to a subsequent appropriate proceeding on the ascertainment of the heirs between or among the parties. The ponencia noted that this determination shall only be in relation to the appropriate cause or causes of action in the ordinary civil action initiated by the putative heirs.[18] However, when a compelling reason exists for the regular court to dispose the issue of heirship, as in Capablanca and similar jurisprudence, the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon,[19] which shall be binding only upon the parties properly impleaded.[20]

And as comprehensively argued in the ponencia, it should be clear at this juncture that unless there is already a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the heirs, subject to the presentation of sufficient proof of their filiation to the decedent, have legal standing, by virtue of their successional rights, to commence and prosecute an ordinary civil action, even without a prior judicial declaration of heirship, so they may assert their right to the estate of the decedent.

ACCORDINGLY, I vote to DENY the Petition.

[1] Ponencia, p. 28.

[2] G.R. No. L-45170, 10 April 1939.

[3] Id.

[4] G.R. No. 224144, 28 June 2017.

[5] Heirs of Gabatan v. Hon. Court of Appeals, et al., G.R. No. 150206, 13 March 2009.

[6] G.R. No. L-28054, 15 June 1972.

[7] Heirs of Gabatan v. Hon. Court of Appeals, et al., G.R. No. 150206, 13 March 2009.

[8] Cabuyao v. Caagbay, et al., G.R. No. L-6636 02 August 1954.

[9] G.R. No. 124320, 2 March 1999.

[10] G.R. No. 155555, 504 Phil. 456 (2005).

[11] G.R. No. 204029, 04 June 2014.

[12] G.R. No. 188773, 742 Phil. 658 (2014).

[13] G.R. No. 231459, 21 January 2019.

[14] G.R. No. 198680, 08 July 2013.

[15] G.R. No. L-29545 and G.R. No. L-27082, 31 January 1978.

[16] See Reyes v. Enriquez, G.R. No. 162956, 10 April 2008.

[17] J. Leonen's Reflection, p. 8.

[18] Ponencia, p. 15.

[19] See Capablanca v. Heirs of Das, G.R. No. 224144, 28 June 2017.

[20] Ponencia, p. 15.

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