

G.R. No. 232579 (Dr. Nixon L. Treyes v. Antonio L. Larlar, Rev. Fr. Emilio L. Larlar, Heddy L. Larlar, Rene L. Larlar, Celeste L. Larlar, Judy L. Larlar and Yvonne L. Larlar)

Promulgated: September 8, 2020

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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.

¹ *Majority Opinion*, p. 29.

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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 ₱500,000.00 and exemplary damages of not less than ₱500,000.00.

² *Rollo*, pp. 89-90.

³ *Id.* at 94.

⁴ *Id.* at 96.

⁵ *Id.* at 97.

- e.) Ordering the defendant to pay plaintiffs attorney's fees of ₱200,000.00 and litigation expenses of not less than ₱150,000.00.

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 Magdalena 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

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).

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 ownership¹¹ 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

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.

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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.

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).

The relationship between Art. 777 and Article 428¹⁷ 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.

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.

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 derivate 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

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

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

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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.

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 a 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.*

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 76²⁷ 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 74²⁸ 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 ₱10,000.00, 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

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.

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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 (*declaracion 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

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).

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

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.

civil action. Under Section 3, Rule 1³³ 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 73³⁵ 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

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 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.

³⁶ *Id.*

³⁷ 5 Phil. 436 (1905).

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

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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 74³⁹ or an extrajudicial partition

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.

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

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.

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 Court⁴⁷ 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

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.

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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

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 an 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 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.

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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:

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;⁵¹
2. 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

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

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

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

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

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:

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;
2. 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

⁵⁵ *Majority Opinion*, p. 18.

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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

⁵⁶ 100 Phil. 364 (1956).

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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,

⁵⁷ 261 Phil. 231 (1990).

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

⁵⁸ *Supra* note 9.

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.

⁵⁹ Supra note 8 at 253-254.

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.

⁶⁰ 95 Phil. 614 (1954).

⁶¹ 67 Phil. 213 (1939).

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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 reconveyance 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 decedent. Accordingly, they were the legitimate intestate heirs of the decedent. As no special proceeding for the settlement of the decedent'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.

⁶² 98 Phil. 677 (1956).

⁶³ 163 Phil. 516 (1976).

⁶⁴ 234 Phil. 64 (1987).

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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 decedent Portugal while respondent was not related to the said decedent. 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:

⁶⁵ 722 Phil. 460 (2013).

⁶⁶ 747 Phil. 427 (2014).

⁶⁷ 811 Phil. 861 (2017).

⁶⁸ Id. at 875-876.

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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 decedent from his first marriage. Upon the death of the decedent 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

⁶⁹ Supra note 10, at 470.

⁷⁰ 74 Phil. 100 (1943).

⁷¹ 150 Phil. 138 (1972).

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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

⁷² Id. at 144-145.

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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, Pacaña, 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.

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.

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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.

⁷⁴ *Majority Opinion*, p. 19.

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

⁷⁵ In *Spouses Marañon 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.

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* -

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

⁷⁷ *Majority Opinion*, p. 4.

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 actions⁷⁸ 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

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.

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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

⁸⁴ *Majority Opinion*, pp. 27-28.

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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 ₱500,000.00 and exemplary damages of not less than ₱500,000.00.
- e.) Ordering the defendant to pay plaintiffs attorney's fees of ₱200,000.00 and litigation expenses of not less than ₱150,000.00.

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

⁸⁵ *Rollo*, p. 97.

⁸⁶ *Id.* at 98-99.

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

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

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.

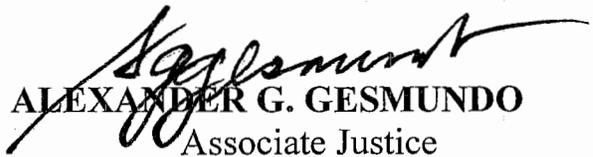
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petitioner did not contest such evidence regarding the declaration of heirship, then such fact is deemed admitted. Section 11, Rule 8 of the Revised Rules of Civil Procedure states:

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 (½) 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.


ALEXANDER G. GESMUNDO
Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court