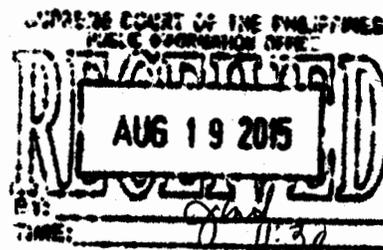




Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**NOTICE**



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2015** which reads as follows:*

**“G.R. No. 165246 – REBECCA DESAMITO VDA. DE ALCANTARA, GERONDINA C. ALCANTARA, RENATO D. ALCANTARA, GIL D. ALCANTARA, ERNESTO D. ALCANTARA, JR., REBECCA ROWENA D. ALCANTARA, and ERIC D. ALCANTARA, Petitioners, v. SPOUSES ANICETO P. CRUZ and ANITA CRUZ, and SPOUSES NORBERTO SANTIAGO AND ADELAIDA SANTIAGO, Respondents.**

This appeal seeks to reverse the decision promulgated on August 30, 2004,<sup>1</sup> whereby the Court of Appeals (CA) upheld the order dated December 14, 1998 issued by the Regional Trial Court, Branch 115, in Pasay City (RTC) granting the motion to dismiss the respondents had filed in Civil Case No. 97-0358, a special civil action for declaratory relief.<sup>2</sup>

It appears that on September 7, 1983, Leona C. *Vda. De* Alfonso (Leona) executed a *pacto de retro sale*<sup>3</sup> over her undivided half portion of two lots with an aggregate area of 617 square meters, more or less, covered by Transfer Certificate of Title No. 19232 of the Registry of Deeds of Pasay City, the other undivided half being registered in the names of Ernesto Alcantara, married to Rebecca Desamito (one of the petitioners herein), and Gerondina Alcantara. TCT No. 19232 was derived from TCT No. 4821 (38601)/T-27 that was registered in the names of Leona and Dolores Cifra, the latter being the predecessor-in-interest of the herein

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<sup>1</sup> *Rollo*, pp. 57-73; penned by Associate Justice Aurora Santiago-Lagman (retired), with Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Rebecca De Guia-Salvador (retired) concurring.

<sup>2</sup> *Id.* at 403-404.

<sup>3</sup> *Id.* at 235-236.

petitioners. Under the *pacto de retro* sale, Leona undertook to repurchase her portions within three months from the date of the sale, failing in which the sale and conveyance would be deemed absolute and irrevocable without the necessity of executing the final deed of sale or other instrument to enable the respondents to consolidate ownership of the property. Leona did not repurchase within the stipulated period. Following her death, the respondents acted to recover her undivided portion, but the petitioners refused them. Hence, the respondents brought an action for specific performance in the RTC in Pasay City (Branch 118) to demand the partition of the two lots, which was docketed Civil Case No. 2881-P.<sup>4</sup> On December 15, 1989, Branch 118 rendered its decision,<sup>5</sup> disposing as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiffs and as against the defendants and the intervenors:

1) Declaring the Pacto de Retro Sale dated September 7, 1983 to be a real Sale Con Pacto de Retro;

2) Declaring the plaintiffs as one-half co-owners of lots 4399 and 4400 of the Cadastral Survey of Pasay City and covered by Transfer Certificate of Title No. T-19232 formerly belonging to Leona C. vda. de Alfonso together with all the improvements thereon;

3) Ordering the parties herein to partition the said two lots with one-half belonging to the plaintiffs and the other half belonging to the defendants and intervenors, and to share equally in the expenses thereof;

4) To reimburse plaintiffs one-half of the income of the property derived from the properties in question and received by the defendants beginning September 7, 1983;

5) Ordering defendants and intervenors to pay the plaintiffs the sum of ₱5,000.00 as attorney's fees; and

6) Costs of the suit.

SO ORDERED.<sup>6</sup>

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<sup>4</sup> Entitled *Aniceto P. Cruz and Roberto Santiago, Plaintiffs, v. Rebecca Desamito Vda. De Alcantara and Gerondina Alcantara, Defendants; Renato D. Alcantara, Gil D. Alcantara, Ernesto D. Alcantara, Jr., Rebecca Rowena D. Alcantara and Eric Alcantara, Intervenors.*

<sup>5</sup> *Rollo*, pp. 544-554.

<sup>6</sup> *Id.* at 554.

On appeal by the petitioners (C.A.-G.R. CV No. 28240), the CA affirmed the judgment of the RTC on March 25, 1994,<sup>7</sup> but deleted the attorney's fees for lack of basis.<sup>8</sup> Dissatisfied, the petitioners appealed to the Court (G.R. No. 114762),<sup>9</sup> which upheld on January 29, 1996 the decision of the CA "subject to the modification concerning the award for reimbursement of one-half of the income of the property, which is hereby deleted for lack of basis, without prejudice, however, to the application of Article 500 of the Civil Code at the appropriate time."<sup>10</sup> On April 15, 1996, the judgment in G.R. No. L-114762 became final and executory, and was entered in the Court's book of entries of judgments.<sup>11</sup>

On September 30, 1996, the respondents sought the execution of the final and executory judgment in Branch 118. To forestall the execution, however, the petitioners tendered in writing to the respondents on November 6, 1996 the amount of ₱270,000.00 in the exercise of their supposed right of repurchase or redemption under Articles 1606 and 1620 of the *Civil Code*.<sup>12</sup> They later filed a *Motion to Stay Execution* on November 8, 1996.<sup>13</sup> However, on November 20, 1996, the respondents refused the tender of the petitioners.<sup>14</sup>

On February 14, 1997,<sup>15</sup> Branch 118 granted the respondents' Motion for Execution.

The petitioners moved for the reconsideration of the order of February 14, 1997.<sup>16</sup> Nevertheless, Branch 118 denied the *Motion for Reconsideration* and the *Motion to Stay Execution*.

The petitioners then filed a petition for declaratory relief with preliminary mandatory injunction in the RTC (Civil Case No. 97-0358). The case was raffled to Branch 112.<sup>17</sup> On March 19, 1997, the RTC denied the petition for declaratory relief on the ground that the purpose of the

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<sup>7</sup> Id. at 556-567; penned by Associate Justice Consuelo Ynares-Santiago (later a Member of the Court), and concurred in by Associate Justice Oscar M. Herrera (retired) and Associate Justice Corona Ibay-Somera (retired).

<sup>8</sup> Id. at 566.

<sup>9</sup> Id. at 569-580.

<sup>10</sup> Id. at 581.

<sup>11</sup> Id.

<sup>12</sup> Id. at 487.

<sup>13</sup> Records pp. 262-263.

<sup>14</sup> Id. at 246-247.

<sup>15</sup> *Rollo*, pp. 195-196.

<sup>16</sup> Records, pp. 293-299.

<sup>17</sup> *Rollo*, pp. 450-478.

petition was to thwart the final decision of the Court despite being already in the process of execution.<sup>18</sup> Even so, the RTC allowed the petitioners to amend their petition for declaratory relief, and also granted time to the respondents to file their answer.<sup>19</sup>

On March 21, 1997, the Court denied the petitioners' *Motion for Reconsideration*.<sup>20</sup>

On March 24, 1997, the petitioners filed their amended petition for declaratory relief with application for preliminary injunction, whereby they prayed, among others, that: (a) a writ of preliminary prohibitory injunction be issued against the respondents directing them to refrain or desist from pursuing the partition of the property until all the issues of repurchase and redemption were finally resolved; (b) a declaratory judgment be rendered declaring the right to repurchase or to redeem under Articles 1606 and 1620 of the *Civil Code*; (c) an order be issued directing the respondents to accept the redemption or repurchase price tendered, and to effect the necessary deed of conveyance; (d) that an order be issued after hearing confirming the writ of preliminary prohibitory injunction and making it permanent until the repurchase or redemption was effectuated and accomplished.<sup>21</sup>

On May 13, 1997, the respondents moved to dismiss the petition for declaratory relief on the following grounds, namely: (a) lack of legal capacity to sue; (b) there was another action pending between the same parties for the same cause; (c) the filing of the action was a violation of Administrative Circular No. 04-94 of the Court; (d) the cause of action was barred by prior judgment or by statute of limitations; and (e) the complaint stated no cause of action.<sup>22</sup>

After seeking and being granted extensions of the period to comment on the motion to dismiss, the petitioners ultimately submitted an *opposition* to the *Motion to Dismiss* on June 20, 1997.<sup>23</sup>

In the meantime, on May 23, 1997, the petitioners moved to declare the respondents in default for their failure to file the answer.<sup>24</sup> The respondents opposed the motion.

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<sup>18</sup> Records, p. 144.

<sup>19</sup> Id.

<sup>20</sup> CA *rollo*, p. 137.

<sup>21</sup> *Rollo*, pp. 203-231..

<sup>22</sup> Id. at 425-429.

<sup>23</sup> Id. at 430-441.

<sup>24</sup> Id. at 406-408.

On June 24, 1997, the respondents filed a *Motion for Inhibition*.<sup>25</sup> On June 27, 1997, the petitioners opposed the Motion for Inhibition and instead prayed for the granting of their motion to declare the respondents in default.<sup>26</sup>

On July 1, 1997, Presiding Judge Manuel P. Dumatol of Branch 112 inhibited himself, and forwarded the records of Civil Case No. 97-0358 to the Clerk of Court for re-raffle to another branch.<sup>27</sup> As a result, the case was re-raffled to Branch 115.

On July 24, 1997, Branch 115 denied the *Motion for Reconsideration* filed against the order of February 14, 1997 granting the *Motion for Execution*, pertinently stating and ruling:

On movants added ground, that is, their filing and pendency of Civil Case No. 97-0358, the Court considers it insignificant in the matter of executing the Decision in the case at bar. That Decision of this Court cannot be passed upon by another Court of coordinate and concurrent jurisdiction. More so, if it has been affirmed by the Court of Appeals and the Honorable Supreme Court, and as the affirmation is already final and executory the same can no longer be modified or amended in any manner by any court of lower category.

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby DENIED.

With respect to plaintiff's MOTION TO SET MECHANICS OF IMPLEMENTATION OF WRIT OF EXECUTION, although the court finds the proposals of the plaintiff in paragraph (4) of the said Motion to be fair and reasonable and is inclined to approve the same, in the interest of justice, the defendants and intervenors, however are hereby given five (5) days from receipt of this Order within which to file any counter proposal on the matter. Should they fail to file such counter proposal as required within the given period they shall be considered as not interposing any objection thereto.

The Court also believes, for expediency and economy that the parties should be as they are hereby directed to file their comments of approval or disapproval, for the guidance of the Court, to Exh. C, which is a Subdivision Plan of the subject property resulting from the survey made by Geodetic Engineer Ponciano Miranda pursuant to their agreement prior to the filing of this case.

SO ORDERED.<sup>28</sup>

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<sup>25</sup> Records, pp.333-334.

<sup>26</sup> Rollo pp. 411-416.

<sup>27</sup> Id. at.422-424.

<sup>28</sup> Rollo, pp. 447-449.

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Hence, the petitioners assailed the order of February 14, 1997 and the resolution of July 24, 1997 on *certiorari* (CA-G.R. SP No. 45545).

On November 18, 1998, the CA promulgated its judgment in CA-G.R. SP No. 45545,<sup>29</sup> decreeing:

**WHEREFORE**, above premises considered, the instant petition is **DENIED**. The assailed Order dated February 14, 1997 and the Resolution dated July 24, 1997 issued by public respondent in Civil Case No. 2881-P are hereby **AFFIRMED**. Public respondent is hereby ordered to proceed with the implementation of the decision in Civil Case No. 2881-P.<sup>30</sup>

The petitioners appealed the decision in CA- GR.SP No. 45545.

On December 14, 1998, Branch 115 granted the petitioners' *Motion to Dismiss the Petition for Declaratory Relief*, stating:

After careful examination of the record of this case, the Court found that the petition itself, in page 2 thereof admits of the then pendency of another action between the herein parties, which was Civil Case No. 2881-P in Branch 118 of this station. Records reveal that said case (where the petitioners were the defendants) had been decided upon by the said Regional Trial Court, by the Court of Appeals, and finally by the Supreme Court against the petitioners. The only incident then left to be resolved was the issue regarding execution of judgment. In order to thwart the Motion for Execution filed by the private respondents (then plaintiffs), the petitioners (then defendants) raised the issue of redemption/repurchase which is also the same issue in this present case. Following the denial of their Motion to Stay Execution and the Motion for Reconsideration of said denial, the petitioners filed this petition.

The petitioner's admission in page 8 of their Opposition to the Motion to Dismiss that the issue in the other Branch ( Pasay RTC, Branch 118) is the present "issue of whether the execution should be stayed because of the filing of this new suit" cannot escape this Court's attention.

This Court, therefore holds that the petitioner filed this instant case in order to subvert the execution of the affirmed decision of the RTC, Branch 118.

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<sup>29</sup> Id. at 582-586; penned by Associate Justice Romeo A. Brawner (later Presiding Justice/deceased) and concurred in by Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Martin S. Villarama, Jr. (now a Member of the Court).

<sup>30</sup> Id. at 586.

This instant case can not prosper; otherwise, the petitioners could have effectively accomplished in this forum the relief they once sought and lost in another forum. Such act is contemptible and contumacious, such that if tolerated, there would be no end to litigation. Petitioners are guilty of forum shopping.

The other grounds raised by the respondents in their motion to dismiss need not be discussed.

WHEREFORE, the Motion to Dismiss is GRANTED.

SO ORDERED.<sup>31</sup>

On February 28, 2000, in Civil Case No. 2881, Branch 118 granted the respondents' motion to assign/allot divided portions of subject property to the party litigants for being meritorious and well-taken,<sup>32</sup> to wit:

WHEREFORE, as prayed for the subject property which is covered by TCT No. 19232 of the Register of Deeds of Pasay City consisting of Lot Nos. 4399 and 4400 of the Cadastral Survey of Pasay with a total area of 617 square meters which has been partitioned/divided into two (2) equal parts by the Del Mundo, Miranda and Espiridion Surveying Office at ₱20,000, as service fee, with the corresponding approved Consolidation Subdivision plan and Technical Descriptions are hereby assigned/allotted to the parties as follows:

1) To defendants and intervenors Rebecca Desamito & Gerondina Alcantara-Lot No. 4399 corresponding to the one-half portion (1/2) alongside P. Villanueva Street, with a 2-meter wide provision for a perpetual right of way on the northwestern portion. The said Rebecca Desamito & Gerondina Alcantara shall exercise absolute ownership over the same and take actual and physical possession thereof. They are however hereby further ordered to pay Del Mundo Miranda and Espiridion Surveying Office the amount of ₱10,000.00 as their ½ share for its services;

2) Alloted to plaintiffs Aniceto P. Cruz and Roberto Santiago is Lot no. 4400, which is the other half at the back portion. They shall exercise absolute ownership over the same and take physical possession thereof and shall pay Del Mundo Miranda & Espiridion Surveying Office the amount of ₱10,000.00, their ½ share for its services.

This Order is an implementation of the Decision of this Court in the above-entitled case dated December 15, 1989, as finally adjudged by the Honorable Supreme Court in G.R. No. 114762, and the Honorable Court of Appeals in CA-G.R. SP. No. 45545. Furthermore, this Order, together with the Consolidation Subdivision Plan (Annex "A" Motion),

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<sup>31</sup> Id. at 159-160.

<sup>32</sup> Id. at 591-592.

and the Technical Descriptions (Annexes "B" and "B-1" same Motion), are the conclusive evidence not only of the absolute ownership of the portions assigned /allotted to the aforementioned parties, but also of their right to take actual and physical possession thereof.

For lack of merit, defendants and intervenors' petition/motion to set aside orders and related proceedings is hereby DENIED.

SO ORDERED.

On November 23, 2001, Sheriff IV Severino DC. Balubar, Jr. submitted to Branch 118 a *Partial Certificate of Turn-Over to the Peaceful Possession*.<sup>33</sup>

On August 30, 2004, the CA, finding no error in the dismissal of Civil Case No. 97-0358, promulgated its decision in CA-G.R. CV No. 63653,<sup>34</sup> to wit:

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED** for lack of merit and the assailed Order of the Regional Trial Court of Pasay City, Branch 115, dated December 14, 1998 is **AFFIRMED**.

SO ORDERED.<sup>35</sup>

On October 28, 2004,<sup>36</sup> the petitioners appealed to the Court, attributing the following errors to the CA, namely:

- A. The Court of Appeals erred in not declaring that the Trial Court should have granted the Motion to Declare Respondents in Default instead of granting the Motion For Inhibition.
- B. The Court of Appeals erred in not declaring that the Trial Court should have granted the Motion to declare Respondents in Default instead of granting the Motion to Dismiss.
- C. The Court of Appeals erred in not declaring that the Trial Court erred in its Finding/Ruling that the only matter/issue remaining in Civil Case No. 2881-P is the issue regarding the execution of the Judgment.

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<sup>33</sup> Id. at 593.

<sup>34</sup> Supra note 1.

<sup>35</sup> *Rollo*, p. 72.

<sup>36</sup> Id. at 15-50.

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- D. The Court of Appeals erred in not declaring that the Trial Court erred in its Finding/Ruling that the motion to stay execution in Civil Case No. 2881-P was based solely on the ground that the appellants-petitioners sought to exercise their rights to repurchase/redeem.
- E. The Court of Appeals erred in not declaring that the lower court erred in its Finding/Ruling that the issue involved in the Motion To Stay Execution in Civil Case No. 2881-P is also the same issue involved in Civil Case No. 97-0358.
- F. By way of summarization, the respondent Court of Appeals committed inter alia, the following additional errors:
1. The Court of Appeals erred in not declaring that the Lower Court committed a flagrant violation of Article VIII, Section 14 of the Constitution concerning the manner of rendering Decisions/Resolutions.
  2. The Court of Appeals erred in not declaring that the lower court erred in its Finding/Ruling that the petitioners filed Civil Case No. 97-0358 in order to subvert the execution of the affirmed decision in Civil Case No. 2881-P.
  3. The Court of Appeals erred in not declaring that the Trial Court erred in its Finding/Ruling that the relief prayed for in Civil Case No. 97-0358 is the same relief prayed for in Civil Case No. 2881-P.
  4. The Court of Appeals erred in not declaring that the Trial Court erred in its Ruling/Finding that the appellants are guilty of Forum Shopping.
  5. The Court of Appeals erred in not declaring that the trial court erred, as a consequence of the above-preceding errors, in Granting/Approving the Motion To Dismiss.
  6. The Court of Appeals erred in not declaring that the Trial Court erred in not declaring the respondents in default and in not rendering judgment thereafter granting the relief prayed for by the petitioners
  7. The Court of Appeals erred in Ruling/Finding that the petitioners are not entitled to file the Petition for Declaratory Relief under Rule 63 Declaratory Relief and Similar Remedies) of the 1997 Rules of Civil Procedure.

8. The Court of Appeals erred in Ruling/Finding that an ordinary action for Repurchase/Redemption cannot be included/combined, as an alternative/conjunctive cause of action, with an Action/Petition for Declaratory Relief.

### Ruling of the Court

The petition for review is absolutely bereft of merit. The CA committed no reversible error to justify the reversal of its decision.

To start with, a justiciable controversy is a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law.<sup>37</sup> Once the dispute is finally resolved, there is no more justiciable controversy to speak of. It is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly even by the highest court of the land.<sup>38</sup> Otherwise, there would be no end to litigation and would set to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. Considering that the instant case had been fully litigated and reached its finality, the decision is conclusive upon the parties and those in privity with it. The same cannot be disturbed by the courts.<sup>39</sup>

Yet, the moves of the petitioners reflected an inordinate desire to reopen the controversy between them and the respondents, and to frustrate the implementation of the final and executory decision rendered in Civil Case No. 2881-P. Such moves cannot be tolerated because they threaten judicial stability and mock the administration of justice.

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<sup>37</sup> *Cutaran v. Department of Environment and Natural Resources*, G.R. No. 134958, January 31, 2001, 350 SCRA 697, 704-705.

<sup>38</sup> *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 396-397; *Teodoro v. Court of Appeals*, G.R. No. 140799, September 10, 2002, 388 SCRA 527, 536.

<sup>39</sup> *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 172, 190.

Secondly, the RTC properly dismissed Civil Case No. 97-0358, and the CA correctly upheld the dismissal because no action for declaratory judgment can be commenced in relation to the judgment of a court of law. The action for declaratory relief is governed by Rule 63 of the *Rules of Court*, whose Section 1<sup>40</sup> precisely enumerates the subject matters to be inquired into in a special civil action for declaratory relief, namely: **deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation.** It is clear from the rule itself that a judgment of a court of law is not included in the enumeration. The Court has confirmed that the enumeration of the matters to be tested in a petition for declaratory relief is exclusive, holding in *Lerum v. Cruz*:<sup>41</sup>

Under this rule, only a person who is interested “under a deed, will, contract or other written instrument, and whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.” **This means that the subject matter must refer to a deed, will, contract or other written instrument, or to a statute or ordinance, to warrant declaratory relief. Any other matter not mentioned therein is deemed excluded. This is under the principle of *expressio unius est exclusio alterius*.** (Emphasis supplied.)

A petition for declaratory relief cannot properly have a court decision as its subject matter.<sup>42</sup> Verily, a court decision cannot be included within the purview of the phrase “*other written instrument*” for the simple reason that the *Rules of Court* already defines or recognizes the ways by which an ambiguous or doubtful decision may be corrected or clarified. Any party who is not agreeable to a decision either on questions of law or of fact may file with the trial court a motion for reconsideration or motion for a new trial in order that the defect may be corrected;<sup>43</sup> or may appeal the

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<sup>40</sup> Section 1 of Rule 63, *Rules of Court*, states:

Section 1. *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule. (En Banc Resolution, February 17, 1998)

<sup>41</sup> 87 Phil. 652, 657 (1950).

<sup>42</sup> *CJH Development Corporation v. Bureau of Internal Revenue*, G.R. No. 172457, December 24, 2008, 575 SCRA 467, 473.

<sup>43</sup> *CJH Development Corporation v. Bureau of Internal Revenue*, supra, see *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 383; *Tanda v. Aldaya*, 98 Phil. 244-247 (1956).

decision to the proper superior court. There is no need to resort to the special civil action set in Rule 63. Why the decision of the courts cannot be the subject of a petition for declaratory relief is predicated upon the principle of *res judicata* by which the mark of finality is stamped on a case that has been fully and definitely litigated in court.

And, thirdly, the trial court must issue the writ of execution once the decision becomes final and executory.<sup>44</sup> The issuance of the writ of execution is the ministerial act of ordering the execution of the judgment; after such judgment has been fully satisfied, the case is deemed terminated once and for all. The rule admits of certain exceptions, wherein the execution of the judgment may be stayed,<sup>45</sup> namely: (a) when certain facts and circumstances transpire or supervene after the judgment has become final which could render the execution of the judgment unjust;<sup>46</sup> (b) when there has been a change in the situation of the parties which make such execution inequitable,<sup>47</sup> or would render the execution of the judgment unjust;<sup>48</sup> (c) when it appears that the controversy had never been submitted to the judgment of the Court;<sup>49</sup> (d) when it appears the writ has been issued improvidently or without authority or against the wrong party;<sup>50</sup> (e) that the judgment debt has been paid or otherwise satisfied;<sup>51</sup> (f) where it becomes imperative, in the higher interest of justice, to direct its modification in order to harmonize the disposition with the prevailing circumstances.<sup>52</sup> Regrettably for the petitioner, none of the exceptions is applicable herein.

As a final word herein, we observe that the petition for declaratory relief was brought for the ostensible purpose of defeating the prompt execution of the final judgment for the partition of the properties involved in Civil Case No. 2881-P. The petitioners had absolutely no right or reason to refuse to accept such final and executory decision of partition. By their moves to defeat the final judgment against them, including filing the petition for declaratory judgment, they were guilty of abusing court procedures and processes. Hence, it is only just and proper, if not imperative, that they be declared liable for treble costs of suit.

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<sup>44</sup> Section 1, Rule 39, *Rules of Court*.

<sup>45</sup> *Ortegas v. Hidalgo*, G.R. No. 80140, June 28, 1991, 198 SCRA 635, 639-640.

<sup>46</sup> *Service Specialist, Inc. v. Sheriff of Manila*, No. L-74586, October 17, 1986, 145 SCRA 139, 146; *Cabias v. Adil*, No. L-49648, March 18, 1985, 135 SCRA 354, 360.

<sup>47</sup> *Li Kim Tho v. Sanchez*, 82 Phil. 776 (1949).

<sup>48</sup> *Philippine Veterans Bank v. Intermediate Appellate Court*, G.R. No. 73162, October 23, 1989, 178 SCRA 645, 650; *Lipana v. Development Bank of Rizal*, No. L-73884, September 24, 1987, 154 SCRA 257, 261.

<sup>49</sup> *Luna v. Intermediate Appellate Court*, No. L-68374, June 18, 1985, 137 SCRA 7, 15.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Galindez v. Rural Bank of Llanera, Inc.*, G.R. No. 84975, July 5, 1989, 175 SCRA 132, 138; *Pascual v. Tan*, 85 Phil. 164, 165 (1949); *Zarate, Jr. v. Olegario*, G.R. No. 90655, October 7, 1996, 263 SCRA 1, 13.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on August 30, 2004 in CA-G.R. CV No. 63653; and **ORDERS** the petitioners to pay treble costs of suit.

**SO ORDERED.”**

Very truly yours,

~~\_\_\_\_\_~~  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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(Civil Case No. 97-0358)

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