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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF ERNESTO MORALES, namely: ROSARIO M. DANGSALAN, EVELYN M. SANGALANG, NENITA M. SALES, ERNESTO JOSE MORALES, JR., RAYMOND MORALES, and MELANIE MORALES,

Petitioners,

- versus -

ASTRID MORALES AGUSTIN, represented by her Attorney-in-fact, EDGARDO TORRES,

Respondent.

G.R. No. 224849

Present:

CARPIO, *J.*
Chairperson,
PERLAS-BERNABE,
CAGUIOA,
JARDELEZA,*
REYES, JR., *JJ.*

Promulgated:

06 JUN 2018

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DECISION

REYES, JR., *J.*:

While the Court could not hold the bonds of familial relationships together through force, it could hope to deter any further degradation of this sacred tie through law.

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* Designated Additional member per Raffled dated May 2, 2018.

Reyes

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 101991, promulgated on August 13, 2015, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 12 of Laoag City, in Civil Case No. 14438-12, dated November 22, 2013. Likewise challenged is the subsequent Resolution[3] of the CA promulgated on April 21, 2016, which upheld the earlier decision.

The Facts

The respondent, Astrid Morales Agustin, is a grandchild of Jayme Morales (Jayme), who was the registered owner of a parcel of land with improvements, designated as Lot No. 9217-A, and located at Barangay Sto. Tomas, Laoag City.[4] The subject property is covered by Transfer Certificate of Title (TCT) No. T-37139, more particularly described as follows:

> A parcel of land (Lot 9217-A, Psd-01-062563, being a portion of Lot 9217, Cad. 195, Laoag Cadastre, L.R.C. Rec. No. 1212), situated at Brgy. Sto. Tomas, City of Laoag, Prov. of Ilocos Norte, Island of Luzon. Bounded on the SE., along Line 1-2 by A.M. Regidor St. (8.00 m.w.); on the SW., along line 2-3 by Provincial Road (15.00 m.w.); on the NW., along line 3-4 by Lot 9217-B of the subd. plan; on the NE., along line 4-1 by Lot 9218, Cad. 195, Laoag Cadastre. Beginning at a point marked "1" of Lot 9217-A on plan, being N. 51 deg. 18' E., 154.84 m. from BLIM No. 2, Cad. 195, Laoag Cadastre.[5]

The respondent initiated the instant complaint, originally together with Lydia Morales,[6] another one of Jayme's grandchildren and the respondent's cousin, for the partition of Jayme's property. They alleged that they, together with the petitioners and their other cousins, were co-owners of the subject property by virtue of their successional rights as heirs of Jayme.

For clarity of the discussion, the heirs of Jayme and his wife, Telesfora Garzon, who both died intestate, were their four (4) children:

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1 Penned by Justice Magdangal M. De Leon, and concurred in by Justices Elihu A. Ybañez and Victoria Isabel A. Paredes; *rollo*, pp. 49-64

2 Penned by Presiding Judge Charles A. Aguilar; id. at 65-78.

3 Id. at 94-95.

4 Id. at 65.

5 Id. at 222.

6 Lydia Morales was later dropped as plaintiff and named as defendant pursuant to the Addendum Order issued by the RTC; id. at 71.

1. Vicente Morales, who was survived by his children: (a) herein deceased defendant Ernesto Morales (substituted by his heirs who are now petitioners herein); (b) Abraham Morales (also deceased); (c) former plaintiff and, eventually, defendant Lydia Morales (now also deceased); and (d) original defendant Angelita Ragasa;

2. Simeon Morales, who was survived by his children: (a) herein respondent Astrid Morales Agustin; (b) Leonides Morales; (c) Geraldine Morales-Gaspar; and (d) Odessa Morales;

3. Jose Morales, who was survived by his children: (a) Victoria Geron; (b) Vicente Morales; (c); Gloria Villasenor; (d) Amalia Alejo; (e) Juliet Manuel; (f) Rommel Morales; and (g) Virgilio Morales (now deceased);

4. Martina Morales-Enriquez, who was survived by her children: (a) Evelina Lopez; (b) Emeterio Enriquez; (c) Elizabeth Somera; and (d) Bernardita Alojipan.[7]

In response to the respondent's complaint, the heirs of Jose Morales filed an answer, which admitted the allegations in the complaint, and interposed no objection to the partition, "provided that their present positions on the subject property are respected."[8]

On the other hand, Ernesto Morales, as one of the heirs of Vicente Morales, filed an Answer with Motion to Dismiss and Compulsory Counter-claims. He alleged that herein respondent has no cause of action against the petitioners because: (1) the proper remedy should not be a complaint for partition but an action for the settlement of the intestate estate of Jayme and his wife; and (2) herein respondent has no more right of participation over the subject property because the same has long been conveyed to Ernesto Morales (as substituted by herein petitioners) by the respondent's parents, Simeon and Leonila Morales.[9]

Meanwhile, per the Order of the RTC dated April 22, 2009, summons to the heirs of Martina Morales-Enriquez, who were at that time residing abroad, were allowed to be served personally.[10] They were subsequently declared to be in default.[11] In response, one of Martina Morales-Enriquez's heirs, Emeterio Enriquez, filed a Motion to Dismiss and alleged that the

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7 Id. at 12.
8 Id. at 52.
9 Id. at 163-164.
10 Id at 71.
11 Id. at 14.

RTC did not acquire jurisdiction over his person because he was not furnished with a copy of the Amended Complaint.[12]

In the hearing dated February 8, 2012, the RTC heard the testimony of the respondent. There being no other witnesses to be presented, the respondent manifested that she was ready to submit her formal offer of exhibits.[13]

After a protracted hearing on motions and other incidents of the case, the RTC rendered its decision on November 22, 2013 *via* a summary judgment in favor of herein respondent, the dispositive portion of which reads:

> WHEREFORE, IN VIEW OF ALL THE FOREGOING DISQUISITIONS, the Court finds preponderance of evidence in favor of the plaintiffs and judgment is hereby rendered:
>
> (1) Decreeing the partition of Lot No. 9217-A above-stated in the following mannfer (sic) and proportion of one-fourth (1/4) share each each (sic) of the direct heirs of the late spouses Jayme Morales and Telesfora Garzon, namely: (1) Vicente Morales, who was succeeded by right of representation by his children Ernesto Morales (duly substituted by his heirs), Abraham Morales, Angelina Ragasa and Lydia Morales; (2) Simeon Morales, who was succeeded by right of representation by his children Odessa A. Morales, Geraldine Morales Gaspar, Leonides A. Morales and Astrid A. Morales-Agustin; (3) Jose Morales who was succeeded by right of representation by his children, Ronnel Morales, Morales, (sic) Victoria Morales, Vicente Morales, Manuel Morales, Gloria Morales, Virgilio Morales, Amelia Morales and Juliet Morales; (4) Martina Morales, who was succeeded by right of representation by her children, Emeterio Morales-Enriquez, Evelina Morales Enriquez-Lopez, Elizabeth Morales Enriquez-Somera and Bernardita Morales Enriquez-Alojipan;
>
> (2) Adjudicating in favor of the above-named heirs by right representation (sic) their respective one-fourth (1/4) share each of the group of heirs by right of representation over the above-stated Lot No. 9217-A; and
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> (3) Ordering the parties to submit their common project of partition of the subject lot with utmost dispatch for approval by the Court;
>
> (4) To pay the cost of the suit.
>
> SO ORDERED.[14]

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12 Id. at 15.
13 Id. at 14.
14 Id. at 77-78.

The RTC ruled that: (1) the estate of a deceased who died intestate may be partitioned without need of any settlement or administration proceeding;[15] and (2) the RTC properly and lawfully rendered summary judgment despite the absence of any motion from any of the parties praying for the application of the rules thereon.[16]

Aggrieved, the petitioners elevated the case to the CA, which thereafter dismissed the appeal and affirmed the RTC Decision on August 13, 2015.

The CA opined that the settlement of the entire estate of the late spouses Jayme and Telesfora is "of no moment in the instant case of partition"[17] because the respondent was "asserting her right as a co-owner of the subject property by virtue of her successional right from her deceased father Simeon Morales, who was once a co-owner of the said property, and not from Jayme and Telesfora Morales."[18]

Further, the CA ruled that an action for partition under Rule 69 of the Rules of Court is an action quasi *in rem*, and thus, "jurisdiction over the impleaded defendants-heirs is not required since the trial court has jurisdiction over the *res* or the subject property which is the subject matter of the action for partition."[19]

Finally, the CA ruled that summary judgment in this case is proper despite the absence of any motion from any of the parties. In support hereto, the CA ratiocinated that the parties prayed for resolution of all "pending motions/incidents" during the hearing on September 18, 2013, and acceded to the RTC pronouncement therein that its resolution "shall be considered as a decision in the said case for partition."[20]

The *fallo* of the CA decision reads:

> WHEREFORE, the instant appeal is DISMISSED. The *Decision* of the Regional Trial Court, Branch 12, Laoag City dated November 22, 2013 is AFFIRMED.

Despite the petitioners' motion for reconsideration, the CA affirmed its decision *via* a Resolution dated April 21, 2016.[21]

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15 Id. at 75.
16 Id. at 76.
17 Id. at 59.
18 Id.
19 Id. at 60-61.
20 Id. at 62.
21 Id. at 93-95.

Hence, this petition.

The Issues

The petitioners anchor their prayer for the reversal of the CA decision and resolution based on the following grounds:

(1) THE [CA] SERIOUSLY ERRED IN NOT FINDING THAT THE PROCEEDINGS IN THE TRIAL COURT WERE VOID CONSIDERING THAT NOT ALL THE DEFENDANTS WHO ARE INDISPENSABLE PARTIES WERE EVER SERVED WITH SUMMONS IN VIOLATION OF DUE PROCESS.

(2) THE [CA] MANIFESTLY ERRED IN FAILING TO CONSIDER THE NECESSITY OF HAVING THE ESTATE OF THE PARTIES' INTESTATE PREDECESSORS (i.e. SPOUSES JAYME AND TELESFORA MORALES) BE DETERMINED AND SETTLED FIRST BEFORE THE DISTRIBUTION AND/OR PARTITION OF ANY OF THE PROPERTIES WHICH FORM PART OF SAID ESTATE.

(3) THE [CA] MOST UTTERLY ERRED IN UPHOLDING THE SUMMARY JUDGMENT OF THE TRIAL COURT ALTHOUGH IT WAS UNDISPUTABLY RENDERED WITHOUT ANY PRIOR MOTION AND HEARING THEREFOR, AND IN THE FACE OF PENDING INCIDENTS WHICH INCLUDE THE: (a) MOTION TO DISMISS OF DEFENDANT EMITERIO ENRIQUEZ ON THE GROUND OF LACK OF JURISDICTION OVER HIS PERSON ROOTED ON THE LACK OF SUMMONS SERVED UPON HIM, (b) THE NON-SERVICE OF SUMMONS TO DEFENDANT ANGELITA RAGASA, AND (c) THE MOTION TO WITHDRAW AS COUNSEL FOR THE PLAINTIFF (HEREIN RESPONDENT).[22]

In essence, the Court is called upon to rule on the following issues: (1) whether or not the partition of the subject property is proper despite the absence of the settlement of the estate of the deceased registered owner thereof; (2) whether or not the RTC could *motu proprio* apply the rule on Summary Judgment; and (3) whether or not the RTC could validly render a decision even in the absence of proof of proper service of summons to some of the real parties in interest in a quasi *in rem* proceeding.

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22 Id. at 21.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds partial merit in the petition.

First, on the Procedural Issue of Improper Service of Summons

The petitioners question the acquisition by the RTC of the jurisdiction to decide on the instant case. After a judicious study of the relevant factual antecedents, the Court rules against the petitioner and in favor of the findings of the RTC and the CA.

The partition of real estate is an action quasi *in rem*.[23] Jurisprudence is replete with pronouncements that, for the court to acquire jurisdiction in actions quasi *in rem*, it is necessary only that it has jurisdiction over the *res*. In the case of *Macasaet vs. Co, Jr.*,[24] the Court stated that "[j]urisdiction over the defendant in an action *in rem* or quasi *in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action."[25]

In the case of *De Pedro v. Romansan Development Corporation*,[26] the Court clarified that while this is so, "to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and quasi *in rem* actions is required."[27] Thus, regardless of the nature of the action, proper service of summons is imperative and that a decision rendered without proper service of summons suffers a defect in jurisdiction.[28]

According to *De Pedro*, the court may acquire jurisdiction over the thing by actually or constructively seizing or placing it under the court's custody.[29] In the landmark case of *El Banco Español Filipino vs. Palanca*,[30] the Court has already ruled that:

> Jurisdiction over the property which is the subject of the litigation may result either from a seizure of the property under legal process, whereby it is brought into the actual custody of the law, or **it may result from the institution of legal proceedings wherein, under special provisions of law, the power of the court over the property is**

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23 *Valmonte v. Court of Appeals*, 322 Phil. 96, 106 (1996).
24 710 Phil. 167 (2013).
25 Id. at 177.
26 748 Phil. 706 (2014).
27 Id. at 725.
28 Id. at 727.
29 *See Biaco v. Philippine Countryside Rural Bank*, 544 Phil. 45, 55 (2007); *Regner v. Logarta*, 562 Phil. 862, 873 (2007).
30 37 Phil. 921, 927 (1918).

recognized and made effective. (Emphasis supplied)

In this case, the filing of the complaint before the RTC which sought to partition the subject property effectively placed the latter under the power of the court. On this front, none of the parties challenged the RTC's jurisdiction.

But more than this, in compliance with *De Pedro*, there is in this case proper service of summons to the defendants. In no uncertain terms, the CA found that: (1) the heirs of Vicente Morales received summons, filed an Answer, and actively participated in the trial; (2) the heirs of Jose Morales filed their Answer and admitted to the allegations in the complaint; and (3) the heirs of Martina Morales were duly served with summons, copies of the complaint, and actively participated in the trial.[31]

Even the trial court authoritatively concluded the same in saying that:

> As borne out from the record of the case, Summons and a copy of the Complaint was served upon and received by defendant Emeterio Enriquez in Virginia Beach on June 25, 2009 as per verified Affidavit of Service of one Nancy G. Wood. Defendant Bernardita Alojipan in Trenton, MI received on July 4, 2009 a copy each of Summons and Complaint as per verified Affidavit of Service of one Herb Alexander. Defendant Elizabeth Somera received in Hanover Dirk, Illinois on June 27, 2009 a copy each of the Summons and of the Complaint as per verified Affidavit of Service of one George Pierce and defendant Evelina Lopez received in Trenton, Michigan on July 4, 2009 a copy each of Summons and Complaint as per verified Affidavit of Service issued by Herb Alexander.[32]

None of the petitioners' submissions are sufficient to justify the Court's deviation from these factual findings by the CA, which affirmed the jurisdiction of the RTC. By necessary implication, therefore, the Court must perforce rule against the petitioners on this ground.

Second, on the Issue of Summary Judgment

A summary judgment in this jurisdiction is allowed by Rule 35 of the Rules of Court.[33] According to the case of *Wood Technology Corporation, et*

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31 *Rollo*, p. 61.

32 Id. at 71.

33 RULE 35 Summary Judgments

SECTION 1. Summary judgment for claimant. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof. (1a, R34)

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al. vs. Equitable Banking Corporation,[34] it is a procedure aimed at weeding out sham claims or defenses at an early stage of the litigation. It is granted to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages.[35] Thus, said the Court in the case of *Viajar vs. Judge Estenzo*,[36] as cited in *Caridao, etc., et al. vs. Hon. Estenzo, etc., et al.*:[37]

> **Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits.** But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.[38] (Emphasis and underscoring supplied)

A reading of the foregoing would reveal that, in the application of the rules on summary judgments, the proper inquiry would be whether the affirmative defenses offered by herein petitioners before the trial court constitute genuine issues of fact requiring a full-blown trial.[39] In other words, the crucial question is: are the issues raised by petitioners not genuine so as to justify a summary judgment?[40]

In *Evangelista vs. Mercator Finance Corp.*,[41] the Court has already defined a genuine issue as an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived,[42] set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial.[43] According to *Spouses Pascual vs. First Consolidated Rural Bank (Bohol), Inc.*,[44] where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

SECTION 2. Summary judgment for defending party. — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits depositions or admissions for a summary judgment in his favor as to all or any part thereof. (2a, R34)

34 492 Phil. 106, 115 (2005)

35 *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, 474 Phil. 259, 266 (2004).

36 178 Phil. 561, 572-573 (1979).

37 217 Phil. 93 (1984).

38 Id. at 100.

39 *Wood Technology Corporation, et al. v. Equitable Banking Corporation*, supra note 34, at 116, citing *Evangelista v. Mercator Finance Corp.*, 456 Phil. 695, 703 (2003).

40 Supra, citing *Narra Integrated Corporation v. Court of Appeals*, 398 Phil. 733, 741 (2000).

41 456 Phil. 695 (2003).

42 Id. at 703.

43 *Spouses Pascual v. First Consolidated Rural Bank (Bohol), Inc.*, G.R. No. 202597, February 8, 2017.

44 Supra; *See* also *Excelsa Industries, Inc. v. Court of Appeals*, 317 Phil. 664, 671 (1995), citing *Paz v. Court of Appeals*, 260 Phil. 31, 36 (1990); *Caridao, etc. et al. v. Hon. Estenzo, etc., et al.*, supra note 37, at 100.

More, the propriety of issuing a summary judgment springs not only from the lack of a genuine issue which is raised by either party, but also from the observance of the procedural guidelines for the rendition of such judgment. Thus, in *Caridao*, the Court nullified the summary judgment issued by the trial court when the rules on summary judgment was applied despite the absence of a motion from the respondent asking for the application thereof. The Court said:

> And that is not all, The (sic) nullity of the assailed Summary Judgment stems not only from the circumstances that such kind of a judgment is not proper under the state of pleadings obtaining in the instant case, but also from the failure to comply with the procedural guidelines for the rendition of such a judgment. **Contrary to the requirements prescribed by the Rules, no motion for a summary judgment was filed by private respondent.** Consequently, no notice or hearing for the purpose was ever conducted by the trial court. The trial court merely required the parties to submit their affidavits and exhibits, together with their respective memoranda, and without conducting any hearing, although the parties presented opposing claims of ownership and possession, hastily rendered a Summary Judgment. **The trial court was decidedly in error in cursorily issuing the said Judgment**.[45] (Emphasis supplied, citations omitted)

Still, in the more recent case of *Calubaquib et al. vs. Republic of the Phils.*,[46] the Court once more was asked to determine the propriety of the summary judgment rendered by the trial court judge in the absence of any motion filed by the parties for that purpose. In that case, the trial court judge opined that "the basic facts of the case were undisputed"[47] and that, even after the parties' refusal to file a motion for summary judgment, the trial court rendered a judgment *sans* trial. In ruling for the nullity of such issued judgment, the Court said that:

> **The filing of a motion and the conduct of a hearing on the motion are therefore important** because these enable the court to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action.[48] (Emphasis and underscoring supplied)

Even in the pre-trial stage of a case, a **motion** for the application of summary judgment is **necessary.** In the recent case of *Spouses Pascual vs.*

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45 Supra note 37, at 102.
46 667 Phil. 653 (2011).
47 Id. at 658.
48 Id. at 663, citing *Estrada v. Consolacion*, 163 Phil. 540, 550 (1976).

First Consolidated Rural Bank (BOHOL), Inc.,[49] Justice Bersamin pointed out that:

> To be clear, the rule only spells out that unless the motion for such judgment has earlier been filed, **the pre-trial *may be* the occasion in which the court considers the propriety of rendering judgment on the pleadings or summary judgment. If no such motion was earlier filed, the pre-trial judge may then indicate to the proper party to initiate the rendition of such judgment *by filing the necessary motion.*** Indeed, such motion is required by either Rule 34 *(Judgment on the Pleadings)* or Rule 35 *(Summary Judgment)* of the *Rules of Court.* **The pre-trial judge cannot *motu proprio* render the judgment on the pleadings or summary judgment.** In the case of the motion for summary judgment, the adverse party is entitled to counter the motion.[50] (Emphasis and underscoring supplied, citations omitted)

Indeed, *Calubaquib* even proceeded further in saying that the "non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment."[51]

On the basis of the foregoing disquisitions, the Court now focuses its attention to the factual milieu surrounding the present case. To begin with, the Court is of the opinion that the petitioners, from the beginning of the proceedings, have already submitted an issue of fact that definitively calls for the presentation of evidence. They have, for all intents and purposes, presented a genuine issue that should have foreclosed the rendition of a summary judgment.

Particularly, while the petitioners have not questioned the fact that the subject property belonged to their progenitor, Jayme, they have, however, asserted that herein respondent has "no more right of participation" over the same.[52] The Answer with Motion to Dismiss and Compulsory Counter-Claims claimed that:

> 7.4 *Astrid Morales Agustin has no more right or participation* –
> Plaintiff's supposed share in the property, together with her siblings, have long been conveyed to herein defendant Ernesto Morales by said plaintiff's own parents, the late Simeon Morales and Leonila Morales. Thus, plaintiff has no more footing to demand partition of the lot for her benefit. x x x.[53]

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49 Supra note 43.
50 Id.
51 Supra note 46, at 663.
52 *Rollo*, p. 163.
53 Id. at 164.

In fact, the original respondent in this case, the father of herein petitioners, attached in his pleading "several handwritten receipts showing payment of their share to the property, then called 'camarin.'"[54]

In the RTC decision, the trial judge hastily dismissed this argument and asserted that:

> The alleged written documents of debt of plaintiffs' parents Simeon Morales and Leonila Albano Morales are not genuine issue of material facts because these documents have no effect on the partition of the subject lot, not debts of the intestate estate of the spouses Jayme Morales and Telesfora Garzon and they are not binding upon the plaintiffs herein.[55]

In affirming this decision, the CA even opined that the issue raised by herein petitioners is "of no moment in the instant case of partition"[56] because the respondent was "asserting her right as a co-owner of the subject property by virtue of her successional right from her deceased father Simeon Morales, who was once a co-owner of the said property, and not from Jayme and Telesfora Morales."[57]

These opinions, however, are reversible errors on the part of both the trial court and the CA. The question of who shall inherit which part of the property and in what proportion is in the province of the partition of the estate of a deceased. That an heir disposed of his/her aliquot portion in favor of another heir is a matter that should be fully litigated on in a partition proceeding—as in this case.

In the case of *Intestate Estate of Josefa Tangco, et al. vs. De Borja*,[58] the Court has already ruled that an heir to an inheritance could dispose of his/her hereditary rights to whomever he/she chooses. This is because:

> [A]s a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such *causante* or predecessor in interest, there is no legal bar to a successor (with requisite contracting capacity) disposing of her or his hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate.[59]

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54 Id. at 165.
55 Id. at 76.
56 Id. at 59.
57 Id.
58 150-B Phil. 486 (1972).
59 Id. at 498.

Further, still according to *Intestate Estate of Josefa Tangco*, this alienation by the heirs of their aliquot portion of the inheritance is recognized by no less than the Civil Code, *viz:*

> [A]nd as already shown, that eventual share she owned from the time of Francisco's death and the Court of Nueva Ecija could not bar her selling it. As owner of her undivided hereditary share, Tasiana could dispose of it in favor of whomsoever she chose. Such alienation is expressly recognized and provided for by article 1088 of the present Civil Code:
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> Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale of the vendor.
>
> **If a sale of a hereditary right can be made to a stranger, then *a fortiori* sale thereof to a coheir could not be forbidden.**"[60] (Emphasis and underscoring supplied)

In yet another case, *Alejandrino vs. Court of Appeals*,[61] the Court has ruled that "when a co-owner sells his inchoate right in the co-ownership, he expresses his intention to 'put an end to indivision among (his) co-heirs.' Partition among co-owners may thus be evidenced by the overt act of a co-owner of renouncing his right over the property regardless of the form it takes."[62] The Court based this assertion on Article 1082 of the Civil Code, which states that:

> Art. 1082. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it **should purport to be a sale, an exchange, a compromise, or any other transaction.** (Emphasis and underscoring supplied)

Thus, when the petitioners herein asserted that the respondent has "no more right of participation" over the subject property because the successional rights of the respondent's parents over the same has already been conveyed to the petitioners' father, the petitioners tendered a genuine issue. They were in fact stating that the respondent's parents exercised their right to sell, exchange, or compromise their undivided inchoate share of their inheritance from Jayme, and, as the Court ruled in *Alejandrino*, the

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60 Id. at 501.
61 356 Phil. 851 (1998).
62 Id. at 866.

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respondent's parents intended a partition of the property as defined in Article 1079 of the Civil Code.[63]

The truthfulness of this allegation, however, could only be ascertained through the presentation of evidence during trial, and not in a summary judgment.

More, the RTC did not only commit reversible error by rendering a summary judgment despite the presence of a genuine issue, it also committed reversible error by applying the rules on summary judgment despite the absence of any motion from any of the parties that prayed for the rule's application.

In their Motion for Reconsideration on the RTC decision, the petitioners argued that none of the parties prayed for the issuance of a summary judgment. They further averred that the **"unilateral declaration** of the trial court that the resolution supposedly on the pending motions/incidents will also be considered as the resolution of the partition case cannot take the place of the required motion and hearing."[64] In fact, they were adamant in clarifying that:

> 12.3. The supposed reiteration by the trial Court of its declaration that the "pending motions/incidents" were considered submitted for resolution as embodied in its Order dated October 29, 2013 could not have warranted the *motu proprio* summary judgment. To begin with, the appellee herself in her Appellee's Brief, concedes that what were submitted for resolution during the October 29, 2013 hearing were the same pending motions as stated earlier, and could not have been the case of partition itself. It can be culled even from the assailed Decision of the trial Court itself that what were submitted for resolution were the then pending incidents and not the main case for partition itself.[65] (Citations omitted)

In their petition, the petitioners reiterated this assertion, *to wit:*

> 27. To the clear understanding of the parties including Atty. Cortes, **the pending incidents at the time were the *Motion to Dismiss*** filed by defendant Emeterio Enriquez questioning the jurisdiction of the trial court over him for lack of service of summons; **the *Opposition* thereto** filed by herein respondent; the *Reply* of Emeterio Enriquez to the opposition of the appellee; **the *Rejoinder* to the reply;** and **the *Motion to Withdraw* filed by therein counsel of herein respondent.**

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63 Article 1079. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value. (n).

64 *Rollo*, p. 87.

65 Id. at 88.

> **28. Unpredictably and beyond the expectation of the defendants including herein petitioners, the trial court rendered a summary judgment as embodied in its Decision dated 22 November 2013.** The presiding judge and *ponente* of said decision soon retired on March 2014.[66]

Even the respondent did not deny the petitioners' allegation that no motion was filed to apply the rules on summary judgment. In addition, in its decision, the trial court itself admitted to having issued the same *motu proprio*, as none of the parties herein moved for such summary judgment. It stated that:

> x x x [S]ummary judgment maybe (sic) rendered in this case upon the own initiative of the Court as **none of the parties moved for such summary judgment to be rendered in this instant case** despite the glaring and apparent existence of no genuine issue on material facts, sham defenses had been put by the defense or mere general denial of the cause of action for partition judicially demanded by the plaintiffs had been alleged by the defendants.[67] (Emphasis supplied)

Thus, that the trial court rendered a summary judgment despite the absence of any motion calling for its application was in clear contravention of the established rules of procedure. To be sure, on the strength of the Court's unequivocal pronouncements in *Caridao*,[68] *Viajar*,[69] *Calubaquib*,[70] and *Pascual*,[71] which require the observance of the procedural guidelines for the rendition of summary judgments, the RTC committed reversible error, and the RTC and CA decisions must perforce be annulled and set aside.

On the Issue of Partition and the Settlement of Estate

On the basis of the discourse above, there should have been no further necessity to discuss the final issue herein presented. Nonetheless, for the guidance of the RTC in resolving the instant case, a discussion of the nature of the partition is in order.

The petitioners argue that an administration proceeding for the settlement of the estate of the deceased is a condition that has to be met before any partition of the estate and any distribution thereof to the heirs could be effected.

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66 Id. at 17.
67 Id. at 76-77.
68 *Caridao, etc., et al. v. Hon. Estenzo, etc., et al*, supra note 37.
69 *Viajar v. Judge Estenzo*, supra note 36.
70 *Calubaquib et al. v. Republic of the Phils.*, supra note 46.
71 *Pascual v. First Consolidated Rural Bank (BOHOL), Inc.*, supra note 49.

While the Court does not agree with this assertion by the petitioners, the Court, nonetheless, agrees that the trial court should have collated Jayme's other properties, if any, prior to the promulgation of any judgment of partition in accordance with the laws on Succession.

Generally, an action for partition may be seen to simultaneously present two issues: first, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned; and second, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of how the property is to be divided between the plaintiff and defendants, *i.e.*, what portion should go to which co-owner.[72]

The Court must emphasize, however, that this definition does not take into account the difference between (1) an action of partition based on the successional rights of the heirs of a decedent, and (2) an ordinary action of partition among co-owners. While oftentimes interchanged with one another, and although in many ways similar, these two partitions draw legal basis from two different sets of legal provisions in the Civil Code of the Philippines (Civil Code).[73]

To begin with, the laws governing the partition of inheritance draws basis from Article 777 of the Civil Code, which states that the rights to the succession are transmitted from the moment of the death of the decedent. As such, from that moment, the heirs, legatees, and devisees' successional rights are vested, and they are considered to own in common the inheritance left by the decedent.

Under the law, partition of the inheritance may only be effected by (1) the heirs themselves extrajudicially, (2) by the court in an ordinary action for partition, or in the course of administration proceedings, (3) by the testator himself, and (4) by the third person designated by the testator.[74]

A reading of the enumeration set above would reveal instances when the appointment of an executor or administrator is dispensed with. One is through the execution of a public instrument by the heirs in an extrajudicial settlement of the estate.[75] Another, which is the focal point of this case, is through the ordinary action of partition.[76]

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72 *Roque v. Intermediate Appellate Court*, 247-A Phil. 203, 211 (1988).
73 Rep. Act. 386 (1950).
74 *Alejandrino v. Court of Appeals*, supra note 59, at 865.
75 Rules of Court, Rule 74, Sec. 1.
76 Id.

According to Rule 74 of the Rules of Court, the heirs may resort to an ordinary action of partition of the estate of the deceased if they disagree as to the exact division of the estate, and *only* "[i]f 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."[77]

The ordinary action for partition therefore is meant to take the place of the special proceeding on the settlement of the estate. The reason is that, if the deceased dies without pending obligations, there is no necessity for the appointment of an administrator to administer the estate for the heirs and the creditors, much less, the necessity to deprive the real owners of their possession to which they are immediately entitled.[78]

Thus, an action for partition with regard to the inheritance of the heirs should conform to the law governing the partition and distribution of the estate, and not only to the law governing ordinary partition. These pertinent provisions of the law could be found in Title IV (Succession), Chapter 4 (Provisions Common to Testate and Intestate Successions), Section 6 (Partition and Distribution of the Estate) of the Civil Code.[79]

Particularly, according to Article 1078 of the Civil Code, where there are two or more heirs, the whole estate of the decedent is owned in common by such heirs, subject to the payment of debts of the deceased.[80] Partition, the Civil Code adds, is the separation, division and assignment of a thing held in common among those to whom it may belong.[81] Thus, every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction.[82]

In addition, and on account of this partition, Article 1061 of the Civil Code requires the parties to collate the properties of the decedent which they may have received by way of gratuitous title prior to the former's death, to wit:

> Article 1061. Every compulsory heir, who succeeds with other compulsory heirs, must **bring into the mass of the estate any property or right** which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each

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77 Supra note 75.

78 *See Guico v. Bautista*, 110 Phil. 584, 586 (1960), citing *Bondad v. Bondad*, 34 Phil., 232, 235 (1916); *Fule v. Fule*, 46 Phil., 317, 323 (1924); *Macalinao v. Valdez, et al.*, 95 Phil., 318, 320 (1954); 50 Off. Gaz., 3041; *Intestate Estate of Rufina Mercado v. Magtibay, et al.*, 96 Phil., 383, 386 (1954).

79 Rep. Act. 386 (1950).

80 Civil Code, Art. 1078.

81 Id., Art. 1079.

82 Id., Art. 1082.

heir, and **in the account of the partition.** (1035a) (Emphasis supplied)

On the procedural aspect, the partition of the estate based on the successional rights of the heirs, as herein mentioned, is required by Rule 74 of the Rules of Court (Summary Settlement of Estate) to follow the rules on "ordinary action of partition." This pertains to Rule 69 (Partition), Section 13 of the same rules, which states that:

> Section 13. *Partition of personal property.* — **The provisions of this Rule shall apply to partitions of estates** composed of personal property, or of both real and personal property, in so far as the same may be applicable. (13) (Emphasis supplied)

Once legally partitioned, each heir is conferred with the exclusive ownership of the property, which was adjudicated to him/her.[83]

In contrast, an ordinary partition of co-owned property, specifically of real property, is governed by Title III of the Civil Code on Co-ownership.

Article 484 of the Civil Code provides that there is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.[84] It further provides that no co-owner shall be obliged to remain in the co-ownership; each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.[85] This partition may be made by agreement between the parties, or by judicial proceedings,[86] which, like the procedural aspect of the partition by virtue of successional rights, is governed by Rule 69 of the Rules of Court.

Thus, while both partitions make use of Rule 69 as the procedural rule that would govern the *manner* of partition, the foregoing disquisitions explicitly elaborate that the *bases* of the ownership are different, and the *subject matters* concerned are also different—one speaks of the partition of the *estate* to distribute the inheritance to the heirs, legatees, or devisees, whereas the other speaks of partition of *any undivided thing or right* to distribute to the co-owners thereof.

In the case at hand, the parties are the heirs of the late Jayme Morales. The land being sought to be divided was a property duly registered under Jayme's name. Necessarily, therefore, the partition invoked by the respondents is the partition of the estate of the deceased Jayme.

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83 Id., Art. 1091.
84 Id., Art. 484.
85 Id., Art. 494.
86 Id., Art. 496.

As such, when the petitioners alleged in their answer that there is yet another property that needs to be partitioned among the parties, they were actually invoking the Civil Code provisions, not on Co-ownership, but on Succession, which necessarily includes Article 1061 of the Civil Code—the provision on collation. It is therefore proper for the trial court to have delved into this issue presented by the petitioner instead of disregarding the same and limiting itself only to that singular property submitted by the respondent for partition. As the case of *Gulang vs. Court of Appeals*[87] said:

> **In case the defendants assert in their Answer exclusive title in themselves adversely to the plaintiff, the court should not dismiss the plaintiff's action for partition** but, on the contrary and in the exercise of its general jurisdiction, resolve the question of whether the plaintiff is co-owner or not.[88] (Emphasis and underscoring supplied)

Nonetheless, lest it be misunderstood, the law does not prohibit partial partition. In fact, the Court, in administration proceedings, have allowed partition for special instances. But the Court should caution that this power should be exercised sparingly. **This is because a partial partition and distribution of the estate does not put to rest the question of the division of the entire estate.** In the case of *Gatmaitan vs. Medina*,[89] Justice J.B.L. Reyes warned:

> The lower court, we believe, erred in rendering the order appealed from. **A partial distribution of the decedent's estate pending the final termination of the testate or intestate proceedings should as much as possible be discouraged by the courts and, unless in extreme cases, such form of advances of inheritance should not be countenanced.** The reason for this strict rule is obvious — courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs assured of their shares in the inheritance.[90] (Emphasis supplied)

In this case, the Court is of the opinion that there is no cogent reason to render the partition of one of Jayme's properties and totally ignore the others, if any. Absent any circumstance that would warrant the partial partition and distribution of Jayme's estate, the prudent remedy is to settle the entirety of the estate in the partition proceedings in the court *a quo*. Besides, as stated by the Court in *Gulang*, it is quite unnecessary to require the plaintiff to file another action, separate and independent from that of partition originally instituted.[91] This would entail wastage of additional time

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87 360 Phil. 435 (1998).
88 Id. at 451.
89 109 Phil. 108 (1960).
90 Id. at 111.
91 Id.

and resources, which could already be avoided through consolidated proceedings in the court *a quo*.

In sum, the factual milieu of this case presents questions of facts which are crucial in the complete resolution of the controversy. The Court finds sufficiency in the trial court's decision with regard to the summons directed against the warring heirs—as submitted by the respondent, but also finds error in the trial court's refusal to delve into the genuine issue concerning the partition of the subject property—as submitted by the petitioners. In the end, only a full-blown trial on the merits of each of the parties' claims—and not a mere summary judgment—could write *finis* on this family drama.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 101991 dated August 13, 2015 and April 21, 2016, respectively, are hereby **REVERSED and SET ASIDE.** The case is **ORDERED REMANDED** to the Regional Trial Court, Branch 12, of Laoag City for further proceedings. The trial court judge is **ORDERED** to hear the case with dispatch.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296 The Judiciary Act of 1948, as amended)