EN BANC

G.R. No. 241036 — LUCILA DAVID and THE HEIRS OF RENE F. AGUAS, namely: PRINCESS LUREN D. AGUAS, DANICA LANE D. AGUAS, SEAN PATRICK D. AGUAS, SEAN MICHAEL D. AGUAS and SAMANTHA• D. AGUAS, *petitioners,* ***versus*** **CHERRY S. CALILUNG,** *respondent.*

Promulgated:

January 26, 2021

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CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* affirms the dismissal of Civil Case No. R-ANG-17-03316-CV (RTC Petition) on the ground of lack of subject matter jurisdiction. In so ruling, it characterizes the RTC Petition as one falling within the exclusive jurisdiction of Branch 59 of the Regional Trial Court (RTC) of Angeles City, the duly designated Family Court of said station.

I concur.

I submit this Concurring Opinion only to highlight the remedies which may be availed of by the petitioners herein to enforce the partition of property and delivery of presumptive legitimes ordered in the Petition for Nullity of Marriage filed by Rene F. Aguas (Rene) against petitioner Lucila David (Lucila).

For context, a brief restatement of the relevant facts is in order.

Lucila married Rene on November 24, 1981 in Mabalacat, Pampanga. They begot five children namely, petitioners Princess Luren D. Aguas (Princess), Danica Lane D. Aguas (Danica), Sean Patrick D. Aguas (Patrick), Sean Michael D. Aguas (Michael) and Samantha D. Aguas (Samantha) (collectively, the Aguas heirs).[1]

On December 10, 2003, Rene filed a petition to declare his marriage with Lucila null and void on the ground of the latter's psychological incapacity. Rene declared as conjugal property a 500-square meter parcel of land in Sunset Valley, Angeles City covered by TCT No. 045-90811 issued in the name of Rene and Lucila.[2]

• Also appears as "Samantha Mari" and "Samantha Marie" in some parts of the *rollo*.

1 *Rollo*, p. 21.

2 Id.

On December 22, 2005, Rene and Lucila's marriage was declared null and void. Hence, the handling court ordered the division of the lot covered by TCT No. 045-90811 and the house thereon (Sunset Valley Estate), as well as the delivery of the presumptive legitimes of their common children.[3] Despite this, the presumptive legitimes of the Aguas heirs were not delivered. As well, the partition of the Sunset Valley Estate had not been undertaken.[4]

On October 7, 2006, Rene contracted a second marriage with respondent Cherry Calilung (Cherry).[5]

On November 17, 2015, Rene died intestate.[6]

On May 24, 2017, Cherry filed Special Proceeding Case No. R-Ang 17-01449-SP entitled "*In the Matter of the Petition for Letters of Administration and Settlement of Intestate Estate of Rene F. Aguas, Cherry Calilung-Aguas, Petitioner*" (Settlement Proceeding). The Settlement Proceeding was raffled to RTC Branch 56.[7]

Lucila and the Aguas heirs (collectively, Petitioners) actively participated in the Settlement Proceeding. In their *Comment/Opposition*, they alleged:

> 1. The [Aguas heirs] are the legitimate children of the late [Rene] with [Lucila]. The marriage of [Rene] and [Lucila] was dissolved by virtue of the Decision of [RTC] Branch 60, dated [December 22, 2005] x x x.
>
> 2. Although the marriage was dissolved, there was no liquidation or separation of the properties acquired during their marriage in accordance with Article 102 of the Family Code.
>
> 3. **Thus, when [Rene] married [Cherry] on [October 7, 2006], the properties of [Rene] acquired during the previous marriage should not [have been] included in their property regime pursuant to Article 92 of the Family Code** x x x
>
> x x x x
>
> 4. Furthermore, Article 52 of the Family Code explicitly provides:
>
> Art. 52. The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.

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3 Id. at 21-22.
4 Id. at 22.
5 Id.
6 Id.
7 Respondent's Comment, id. at 245.

> 5. Failure to comply with the requirements of Article 52 will have the effect of nullifying a subsequent marriage pursuant to Article 53 of the same Code, to wit:
>
> > Art. 53. Either of the former spouses may marry again after compliance with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.[8] (Emphasis supplied)

On November 3, 2017, or after the Settlement Proceeding was filed, Petitioners filed the RTC Petition,[9] where they prayed that the marriage between Rene and Cherry be declared null and void pursuant to Article 53 in relation to Article 52 of the Family Code.[10] The RTC Petition was originally raffled to RTC Branch 59.

In its Order dated November 10, 2017 (Transmittal Order), Branch 59 directed the transmittal of the case records to the Office of the Clerk of Court for purposes of re-raffling. The relevant portions of the Transmittal Order read:

> Considering that the instant [RTC] Petition involves a collateral attack on the validity of marriage of [Cherry] and [Rene], it does not fall within the jurisdiction of a family court.
>
> x x x x
>
> **IN LIGHT OF THE FOREGOING, the Branch Clerk of Court is hereby directed to transmit the record of this case to the Office of the Clerk of Court, Regional Trial Court of Angeles City for re-raffle among the courts of general jurisdiction.**[11] (Emphasis supplied; italics omitted)

Pursuant to the Transmittal Order, the RTC Petition was re-raffled to RTC Branch 60. Days later, or on November 24, 2017, Branch 60 issued the assailed Order[12] (First assailed Order) dismissing the RTC Petition on the ground of "lack of jurisdiction," thus:

> It is apparent from the face of the petition that the same is hinged upon the issue of validity of marriage emanating from Articles 52 and 53 of the Family Code. Pursuant to Section 5 of Republic Act 8369 otherwise known as the Family Courts Act of 1997[,] **it is the Family Court who has jurisdiction over this case**.
>
> **Considering that this court is no longer a Family Court, this court has no jurisdiction over the case**.
>
> It is noteworthy to discuss the case of *Lolita D. Enrico v. Heirs of Sps. Eulogio B. Medinaceli and Trinidad Catli-Medinaceli represented by*

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8 Petitioners' Comment/Opposition to the Petition, id. at 52-53.
9 *Rollo,* pp. 70-75.
10 Id. at 73.
11 As quoted in the Petition, id. at 23.
12 *Rollo*, pp. 34-36.

Vilma M. Articulo, where the [Court] opined that A.M. No. 02-11-10-SC covers marriages under the Family Code of the Philippines, and is prospective in its application. The [Court] emphasized that:

> There is no ambiguity in the Rule. *Absolute sententil expositore non indiget.* When the language of the law is clear, no explanation of it is required. Section 2(a) of A.M. No. 02-11-10-SC, makes it the sole right of the husband or the wife to file a petition for declaration of absolute nullity of void marriage.
>
> The Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders explicates on Section 2(a) in the following manner, *viz*:
>
> > 1. Only an aggrieved or injured spouse may file petitions for annulment of voidable marriages and declaration of absolute nullity of void marriages. **Such petitions cannot be filed by the compulsory or intestate heirs of the spouses or by the State**. [Section 2; Section 3, paragraph a]
> >
> > Only an aggrieved or injured spouse may file a petition for annulment of voidable marriages or declaration of absolute nullity of void marriages. Such petition cannot be filed by compulsory or intestate heirs of the spouses or by the State. The Committee is of the belief that they do not have a legal right to file the petition. **Compulsory or intestate heirs have only inchoate rights prior to the death of their predecessor, and hence can only question the validity of the marriage of the spouses upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.** On the other hand, the concern of the State is to preserve marriage and not to seek its dissolution.
>
> **Respondents clearly have no cause of action before the court *a quo*. Nonetheless, all is not lost for respondents. While A.M. No. 02-11-10-SC declares that a petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife, it does not mean that the compulsory or intestate heirs are already without any recourse under the law. They can still protect their successional right, for, as stated in the Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void**

> **Marriages, Legal Separation and Provisional Orders, compulsory or intestate heirs can still question the validity of the marriage of the spouses, not in a proceeding for declaration of nullity, but upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.** x x x
>
> In view of the foregoing, the petition filed by [Petitioners] is hereby dismissed for lack of jurisdiction.[13] (Additional emphasis and underscoring supplied)

However, the Transmittal Order of Branch 59 and the First assailed Order of Branch 60 were only received by Petitioners on December 5, 2017.

Petitioners thus filed a motion for reconsideration praying that the RTC Petition be referred back to Branch 59, the latter being the designated Family Court of Angeles City. Said motion was denied by Branch 60 in its assailed Order[14] dated June 13, 2018 (Second assailed Order), noting, among others, that "there is already a pending intestate proceedings in [Branch 56] x x x."[15]

Aggrieved, Petitioners seek recourse with the Court through this Petition filed under Rule 45 of the 1997 Rules of Court (the Rules).

The *ponencia* upholds the assailed Orders of Branch 60 and finds the dismissal of the RTC Petition proper. According to the *ponencia,* the subject matter of the RTC Petition falls within the exclusive jurisdiction of Branch 59, the designated Family Court of Angeles City.[16]

This finding rests on Section 5(d) of Republic Act No. 8369,[17] otherwise referred to as the Family Courts Act of 1997. Section 5(d) states:

> Section 5. *Jurisdiction of Family Courts.* — The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:
>
> x x x x

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13 Id. at 35-36.

14 Id. at 37-39.

15 Id. at 38.

16 As explained by the *ponencia,* RTC Branch 60 was initially designated as the Family Court of Angeles City through A.M. No. 99-11-07-SC. However, this designation was revoked on September 10, 2008 through A.M. No. 08-8-460 RTC which designated Branch 59 as "special court to try and decide family court cases in lieu of Branch 60 x x x." *Ponencia*, p. 10.

17 AN ACT ESTABLISHING FAMILY COURTS, GRANTING THEM EXCLUSIVE ORIGINAL JURISDICTION OVER CHILD AND FAMILY CASES, AMENDING BATAS PAMBANSA BILANG 129, AS AMENDED, OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, October 28, 1997.

> d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains[.]

As stated at the outset, I agree.

Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, as well as by the character of the reliefs sought.[18]

Here, the relevant allegations in the RTC Petition state:

> 4. Lucila and [Rene] entered into a marital union on [November 24, 1981] in Mabalacat, Pampanga.
>
> x x x x
>
> 5. Out of their marital union, Lucila and Rene begotten five children – Princess, Danica, Patrick, Michael and Samantha x x x.
>
> 6. On [December 10, 2003], Rene filed a Petition for Nullity of Marriage against Lucila before the [RTC], Branch 60 of Angeles City x x x. In the said Petition for Nullity, therein Petitioner Rene declared conjugal properties as follows:
>
> x x x x
>
> > 14[.] That the parties have amassed between them a parcel of land located at Sunset [Valley] Estate, Angeles City consisting of five hundred square meters, more or less. This is aside from the assets in business consisting mainly of merchandise inventory in [Rene's] pawnshop and RTW sales business.
> >
> > It is the desire of [Rene] that title to the aforementioned real property be transferred entirely to their common children while the commercial assets be retained under his administration, given that he still provides for their subsistence and education;
>
> x x x x
>
> 7. The subject property is covered by [TCT] No. 045-90811 x x x and was indeed registered in the names of Spouses Rene F. Aguas and Lucila D. Aguas.
>
> 8. Without receiving any notice from the Court regarding the Petition for Nullity, Lucila learned sometime in the year 2007 that a Decision dated [December 22, 2005] has already been rendered by the

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[18] See *Cabling v. Dangcalan*, G.R. No. 187696, June 15, 2016, 793 SCRA 331, 341 [First Division, per *C.J.* Sereno].

RTC granting the said Petition [for Nullity] filed by Rene. The dispositive portion of the said Decision is herein reproduced as follows:

> "WHEREFORE, the petition is granted and the marriage between petitioner Rene F. Aguas and respondent Lucila D. Aguas solemnized on November 24, 1981 is hereby declared null and void.
>
> Their conjugal property consisting of a house and lot located at Sunset Valley Estate, Angeles City is ordered divided between them providing for the support and the delivery of the [presumptive] legitime to their children. Thereafter, the conjugal partnership of gains is ordered dissolved.
>
> x x x"
>
> x x x x
>
> 9. The Decision above-mentioned, as well as its Certificate of Finality, was not registered with the Office of Registry of Deeds of Angeles City where the subject property is located. Thus, no annotation of said Decision on the Title covering the subject property has ever been made.
>
> x x x x
>
> 10. On [October 7, 2006], Rene and Cherry entered into a marital union without the partition and liquidation of the subject property, and proper delivery of the prospective legitimes of Princess, Danica, Michael, Patrick and Samantha, who are children [from] the first marriage.
>
> x x x x
>
> 11. On [November 17, 2015], Rene died intestate.
>
> 12. Due to the failure of Rene and Cherry to comply with the express provision of the law, the subsequent marriage contracted by the deceased Rene with Cherry is null and void pursuant to Article 53 in relation to Article 52 of the Family Code x x x[.][19] (Italics and underscoring omitted)

Based on these allegations, Petitioners prayed for the issuance of a judgment: (i) declaring the marriage between Rene and Cherry null and void; and (ii) ordering the Local Civil Registrar of Angeles City to annotate the fact of nullity on Rene and Cherry's Certificate of Marriage and transmit the same to the Philippine Statistics Authority for proper registration.[20]

As astutely observed by the *ponencia,* the RTC Petition is a direct action for declaration of nullity of marriage falling under the exclusive jurisdiction of the Family Court, which, in this case, is Branch 59. Thus,

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19 *Rollo,* pp. 71-73.
20 Id. at 73.

Branch 60 correctly dismissed the RTC Petition on the ground of lack of subject matter jurisdiction.

Even assuming, for the sake of argument, that Branch 60 possessed subject matter jurisdiction over the RTC Petition, the latter would have still been subject to dismissal based on A.M. No. 02-11-10-SC which sets forth the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

Section 2 of A.M. No. 02-11-10-SC limits the parties who may file a direct action for declaration of absolute nullity of void marriages, thus:

> SEC. 2. *Petition for declaration of absolute nullity of void marriages.* –
>
> (a) *Who may file.* – A petition for declaration of absolute nullity of void marriages may be filed solely by the husband or the wife.

Clearly, Lucila and the Aguas heirs lack the legal standing to file the RTC Petition.

Nevertheless, the dismissal of the RTC Petition does not bar the resolution of the issues raised therein in the Settlement Proceeding involving Rene's estate as far as the successional rights of the Aguas heirs and Cherry, if any, are concerned, and in a separate action for partition with respect to Lucila's decreed share in the Sunset Valley Estate.

I expound.

Rene and Lucila's marriage was declared null and void through the December 22, 2005 Decision[21] (2005 Nullity Decision), the dispositive portion of which reads:

> WHEREFORE, the petition is granted and the marriage between petitioner Rene F. Aguas and respondent Lucila D. Aguas solemnized on November 24, 1981 is hereby declared null and void.
>
> Their conjugal property consisting of a house and lot located at Sunset Valley Estate, Angeles City is ordered divided between them providing for the support and delivery of the [presumptive] legitime (sic) to their children. Thereafter, the conjugal partnership of gains is ordered dissolved.
>
> After the finality of this Decision, let a Decree of Declaration of Nullity of Marriage be issued in this case.
>
> SO ORDERED.[22]

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21 Id. at 95-102.
22 Id. at 102.

Before delving into the remedies available to Lucila and the Aguas heirs, I find it necessary to stress, for purposes of clarity, that the 2005 Nullity Decision erred in characterizing the Sunset Valley Estate as conjugal property.

To recall, Rene and Lucila's marriage had been declared null and void on the basis of Article 36 of the Family Code. Their union thus falls under the scope of Article 147 of the same statute, which reads:

> ART. 147. **When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.**
>
> In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.
>
> Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.
>
> When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation. (Emphasis supplied)

Pursuant to Article 147 of the Family Code, properties acquired by the parties during their cohabitation are placed in a special co-ownership.

Here, Article 147 applies even if Rene and Lucila were married before the Family Code took effect. Such retroactive application had been settled by the Court in *Paterno v. Paterno,*[23] thus :

> There is no quarrel that the marriage of the petitioner and the respondent had long been declared an absolute nullity by reason of their psychological incapacity to perform their marital obligations to each other. The property relations of parties to a void marriage is governed either by Article 147 or 148 of the Family Code. Since the petitioner and the respondent suffer no legal impediment and exclusively lived with each

[23] G.R. No. 213687, January 8, 2020 [First Division, per *J.* J.C. Reyes, Jr.].

> other under a void marriage, their property relation is one of co-ownership under Article 147 of the Family Code. **The said provision finds application in this case even if the parties were married before the Family Code took effect by express provision of the Family Code on its retroactive effect for as long as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws. Here, no vested rights will be impaired in the application of the said provision given that Article 147 of the Family Code is actually just a remake of Article 144 of the 1950 Civil Code.**[24] (Emphasis supplied)

Lest there be any confusion, it must be clarified that the Sunset Valley Estate is not conjugal property, but rather, co-owned property, as the property relations of Rene and Lucila are "governed by the rules on co-ownership."[25]

That said, the remedies to enforce the liquidation, partition, and delivery of the presumptive legitimes of the common children are the same, whether the subject properties are community property,[26] conjugal property,[27] or co-owned property.[28]

Execution of the 2005 Nullity Decision

The 2005 Nullity Decision lapsed into finality on January 6, 2006 in the absence of an appeal.[29] As a result, the declaration of the Sunset Valley Estate as the sole property owned in common by Rene and Lucila and the sole source of the Aguas heirs' presumptive legitimes had become final and executory.

Upon finality of the 2005 Nullity Decision, Rene, Lucila, or the Aguas heirs could have already moved for its execution, either by motion or independent action, in accordance with Section 6, Rule 39 of the Rules:

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

Section 6, Rule 39 should be read in conjunction with Articles 1144 and 1152 of the Civil Code which state:

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24 Id. at 11.

25 FAMILY CODE, Art. 147.

26 In case of unions governed by the system of absolute community

27 In case of unions governed by the system of conjugal partnership.

28 In case of unions governed by the rules on co-ownership under Article 147 or limited co-ownership under Article 148.

29 While Lucila was served with summons by publication, she claims to have only learned of the 2005 Nullity Decision sometime in 2007. See Petition, *rollo,* p. 21.

> ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
>
> (2) Upon an obligation created by law;
>
> (3) **Upon a judgment**.
>
> x x x x
>
> ART. 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment **commences from the time the judgment became final**. (Emphasis supplied)

Based on the foregoing provisions, Rene, Lucila, and the Aguas heirs had five (5) years from the entry of the 2005 Nullity Decision to move for its execution before the issuing court. Thereafter, said parties had ten (10) years from entry of the 2005 Nullity Decision to file an independent action for its revival.[30]

To be sure, Rene, Lucila, and the Aguas heirs' right to move for the execution of the 2005 Nullity Decision is not inchoate. It vested upon finality of the 2005 Nullity Decision. Nevertheless, it should be stressed that even as the final 2005 Nullity Decision ordered the "division" of the Sunset Valley Estate between Rene and Lucila and the delivery of the Aguas heirs' presumptive legitimes, it did *not* separate, identify, and assign the specific portions to which they are entitled. **Thus, the execution of the 2005 Nullity Decision would have merely triggered partition, or the process of "separation, division and assignment of a thing held in common among those to whom it may belong."**[31]

Partition is effected when the titles of acquisition or ownership corresponding to specific portions of the co-owned property are delivered to the parties to whom such portions are adjudicated.[32] In cases where the title covers one specific portion of the co-owned property which have been assigned to two or more parties, a separate duplicate certificate may be issued to each of them under Section 41 of Presidential Decree No. 1529.

Accordingly, partition would have been effected by the delivery to Rene and Lucila of titles corresponding to their specific assigned portions in the Sunset Valley Estate. With respect to the Aguas heirs, partition would have been effected either by delivery of individual titles in their favor covering their respective specific assigned portions in the Sunset Valley Estate, or the delivery of a single title naming them as pro-indiviso co-

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30 See *Diaz, Jr. v. Valenciano, Jr.*, G.R. No. 209376, December 6, 2017, 848 SCRA 85, 102-103 [Second Division, per *J.* Peralta].

31 CIVIL CODE, Art. 1079.

32 See id., Art. 1089.

owners of the specific portion of the Sunset Valley Estate corresponding to their presumptive legitimes.

However, as things happened, neither Rene nor Petitioners herein moved for the execution of the 2005 Nullity Decision. As well, neither Rene nor Petitioners attempted to execute the 2005 Nullity Decision by instituting an independent action for its revival. Because of this, the partition of the Sunset Valley Estate and the delivery of the presumptive legitimes of the Aguas heirs did not proceed. Without said partition, the Sunset Valley Estate remained under a co-ownership among Rene, Lucila, and the Aguas heirs, in the following proportions:

Parties	**Net Share in Sunset Valley Estate**	**Basis**
Rene	One-fourth[33]	Article 147 of the Family Code, in relation to Article 888 of the Civil Code[34]
Lucila	One-fourth[35]	Article 147 of the Family Code, in relation to Article 888 of the Civil Code
Princess, Danica, Patrick, Michael and Samantha	One-tenth[36] each (collectively, one-half of the *entire* Sunset Valley Estate)	Article 888 of the Civil Code

Succession set in upon Rene's death

Here, Rene's death supervened the enforcement of the 2005 Nullity Decision and the partition of the Sunset Valley Estate. Thus, succession set in and triggered the application of the Civil Code provisions governing succession and the procedural rules governing the settlement of estate of deceased persons.

I. *The successional rights of the Aguas heirs must be determined in the Settlement Proceeding pending with Branch 56*

The Aguas heirs' right to the delivery of their presumptive legitimes had been superseded by their statutory right to succeed Rene as compulsory heirs. In turn, their successional rights and their respective shares in Rene's

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33 One-half share (pursuant to Article 147) less presumptive legitimes (pursuant to Article 888).

34 CIVIL CODE, Art. 888 states:

ART. 888. The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided.

35 One-half share (pursuant to Article 147) less presumptive legitimes (pursuant to Article 888).

36 Representing the sum of 1/20 from Rene's share and 1/20 from Lucila's share in the Sunset Valley Estate.

estate must be determined in the proceeding for the settlement of the latter's estate, which as stated, is already pending with Branch 56.

Reference to Section 1, Rule 73 of the Rules is proper:

> 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. (Emphasis supplied)

Section 1, Rule 73 of the Rules can be traced back to Sections 599 to 603 of Act No. 190,[37] otherwise referred to as the Code of Procedure in Civil Actions and Special Proceedings:

> SECTION 599. *Jurisdiction.* — Courts of First Instance shall have jurisdiction in all matters relating to the settlement of estates and probate of wills of deceased persons, the appointment and removal of guardians and trustees, and the powers, duties, and rights of guardians and wards, trustees and *cestuis que* trust. This jurisdiction shall be called probate jurisdiction.
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> SECTION 600. *Where Resident's Estate Settled.* — If an inhabitant of the Philippine Islands dies, whether a citizen or 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 resided at the time of his death.
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> SECTION 601. *Where Nonresident's Estate Settled.* — If a person resided out of the Philippine Islands at the time of his death, his will shall be allowed and recorded, and letters testamentary or of administration shall be granted in the Court of First Instance of any province in which he had estate.
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> SECTION 602. *The Court Once Taking, To Retain Jurisdiction.* — **When a Court of First Instance in any province has first taken cognizance of the settlement of the estate of a deceased person, as mentioned in the preceding sections, such court shall have jurisdiction of the disposition and settlement of such estate, to the exclusion of all other courts.**
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> SECTION 603. *Jurisdiction, When May Be Contested.* — The jurisdiction assumed by a Court of First Instance, for the settlement of an estate, so far as it depends on the place of residence of a person, or of the

[37] AN ACT PROVIDING A CODE OF PROCEDURE IN CIVIL ACTIONS AND SPECIAL PROCEEDINGS IN THE PHILIPPINE ISLANDS, August 7, 1901.

> 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. (Emphasis supplied)

These provisions were later consolidated and adopted as Section 1, Rule 75 of the 1940 Rules of Court and carried over *verbatim* to the 1964 Rules of Court, and again, to the present Rules.

In *Macias v. Uy Kim,*[38] the Court discussed the functions of the settlement court and the rationale behind the well-established rule on the exercise of the settlement court's jurisdiction:

> Under Section 1 of Rule 73, [of the 1964 Rules of Court], "the court first taking cognizance of the settlement of the estates of the deceased, shall exercise jurisdiction to the exclusion of all other courts." Pursuant to this provision, therefore all questions concerning the settlement of the estate of the deceased Rosina Marguerite Wolfson should be filed before Branch VIII of the Manila Court of First Instance, then presided over by former Judge, now Justice of the Court of Appeals, Manuel Barcelona, where Special Proceedings No. 63866 for the settlement of the testate estate of the deceased Rosina Marguerite Wolfson was filed and is still pending.
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> This Court stated the rationale of said Section 1 of Rule 73, thus:
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> "x x x 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.
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> x x x x
>
> "The provision of Section 602 [now Section 1, Rule 73 of the present Rules], giving one court exclusive jurisdiction of the settlement of the estate of a deceased person was not inserted in the law for the benefit of the parties litigant, but in the public interest for the better administration of justice. For that reason the parties have no control over it."
>
> "On the other hand, and for such effects as may be proper, it should be stated herein that any challenge to the validity of a will, any objection to the authentication thereof, and every demand or claim which any heir, legatee, or party in interest in a testate or intestate succession may make, must be acted upon and decided within the same special proceedings, not in a separate action, and the same judge having jurisdiction in the administration of the estate shall take cognizance of the question raised, inasmuch as

[38] 150-A Phil. 603 (1972) [Second Division, per *J.* Makasiar].

> when the day comes he will be called upon to make distribution and adjudication of the property to the interested parties, x x x."
>
> This was reiterated in Maningat vs. Castillo, thus:
>
> "x x x **The main function of a probate court is to settle and liquidate the estates of deceased persons either summarily or through the process of administration.** (See Rules 74 to 91, inclusive, Rules of Court.) **In order to settle the estate of a deceased person it is one of the functions of the probate court to determine who the heirs are that will receive the net assets of the estate and the amount or proportion of their respective shares.** x x x"
>
> x x x x
>
> Even in other cases, it is also a general principle that the branch of the court of first instance that first acquired jurisdiction over the case retains such jurisdiction to the exclusion of all other branches of the same court of first instance or judicial district and all other coordinate courts. x x x[39] (Emphasis and underscoring supplied)

Section 1, Rule 73 thus grants to the court first taking cognizance of the settlement of the decedent's estate the exclusive jurisdiction to hear and decide all matters relating to the settlement and liquidation of the decedent's estate to the exclusion of all other courts of concurrent jurisdiction. Hence, in *Cuenco v. Court of Appeals*,[40] the Court observed:

> A fair reading of the Rule – since it deals with venue and comity between courts of equal and co-ordinate jurisdiction – indicates that the court with whom the petition is *first* filed, must also *first take cognizance of the settlement of the estate in order to exercise jurisdiction over it to the exclusion of all other courts.*
>
> *Conversely*, such court, may upon learning that a petition for *probate* of the decedent's last will has been presented in another court where the decedent obviously had his conjugal domicile and resided with his surviving widow and their minor children, and that the allegation of the *intestate* petition before it stating that the decedent died *intestate* may be actually false, may *decline to take cognizance* of the petition and hold the petition before it in abeyance, and instead defer to the second court which has before it the petition for *probate* of the decedent's alleged last will.[41] (Italics in the original)

As stated, the main function of a probate court is to settle and liquidate the estates of deceased persons.[42] Integral to this process is the determination of the assets that form part of the decedent's estate, the heirs

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39 Id. at 611-612.
40 153 Phil. 115 (1973) [En Banc, per *J.* Teehankee].
41 Id. at 128.
42 *Macias v. Kim*, supra note 38, at 612, citing *Maniñgat v. Castillo*, 75 Phil. 532, 535 (1945).

who shall participate in said estate, and the amount or proportion of these heirs' respective shares therein.[43]

Here, the settlement of Rene's estate involves two phases.

The first phase involves the partition of the Sunset Valley Estate for the purpose of determining the portion thereof which should be included in the inventory of assets forming part of Rene's estate.

To recall, the Sunset Valley Estate is co-owned property acquired during the union of Rene and Lucila. Under Article 147 of the Family Code, Rene owned one-half of the Sunset Valley Estate during his lifetime. One-half of Rene's share is reserved for the Aguas heirs' presumptive legitimes. Accordingly, following partition, only one-fourth of the Sunset Valley Estate shall be included in the inventory of assets forming part of Rene's estate.

The second phase involves the determination of Rene's net share in the assets acquired during his marriage with Cherry. During this phase, Branch 56, as settlement court, must pass upon the validity of Rene and Cherry's marriage collaterally, insofar as it is necessary to determine the property regime governing their marriage, and ultimately, Rene's net share in the assets acquired during their union. Thereafter, Rene's estate, consisting of his one-fourth share in the Sunset Valley Estate derived from his union with Lucila, his net share in the assets derived from his union with Cherry, and all other assets exclusively acquired by or pertaining to him, shall be distributed among his heirs in accordance with the provisions of the Civil Code, with the Aguas heirs' presumptive legitimes and other gratuitous dispositions by Rene during his lifetime being brought to collation pursuant to the third paragraph of Article 51[44] of the Family Code and Article 908[45] of the Civil Code, respectively.

At this point, it may not be amiss to stress that in the 1993 case of *Domingo v. Court of Appeals*[46] (*Domingo*), the Court already clarified that a collateral attack against a void marriage may be permitted for purposes other than remarriage.

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43 See id.

44 ART. 51. In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

The children or their guardian, or the trustee of their property, may ask for the enforcement of the judgment.

The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

45 ART. 908. To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.

To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them.

46 297 Phil. 642 (1993) [Third Division, per *J.* Romero].

In *Domingo,* respondent Delia Soledad Domingo (Delia) filed a petition for "Declaration of Nullity of Marriage and Separation of Property" against her husband Roberto Domingo (Roberto). Delia married Roberto in 1976. Nearly a decade after, Delia discovered that Roberto was previously married to a certain Emerlina dela Paz (Emerlina). Delia only came to know of such fact when Emerlina sued her and Roberto for bigamy. Roberto filed a Motion to Dismiss on the ground that Delia's petition stated no cause of action since the marriage between him and Delia is bigamous, and thus, void *ab initio*.

The lower court denied Roberto's Motion to Dismiss, stressing that while Delia and Roberto's marriage can be presumed void *ab initio,* a judicial declaration to this effect is still necessary. The Court of Appeals affirmed, prompting Roberto to elevate the case to the Court. The Court granted the petition, citing the deliberations of the Civil Code and Family Law Revision Committees, thus:

> The Family Law Revision Committee and the Civil Code Revision Committee which drafted what is now the Family Code of the Philippines took the position that parties to a marriage should not be allowed to assume that their marriage is void even if such be the fact but must first secure a judicial declaration of the nullity of their marriage before they can be allowed to marry again. This is borne out by the following minutes of the 152nd Joint Meeting of the Civil Code and Family Law Committees where the present Article 40, then Art. 39, was discussed.
>
> "B. Article 39. —
>
> *The absolute nullity of a marriage may be invoked only on the basis of a final judgment declaring the marriage void, except as provided in Article 41.*
>
> [Justice Eduardo P. Caguioa (Justice Caguioa)] remarked that the above provision should include not only void but also voidable marriages. He then suggested that the above provision be modified as follows:
>
> *The validity of a marriage may be invoked only. . .*
>
> Justice Reyes (J.B.L. Reyes), however, proposed that they say:
>
> *The validity or invalidity of a marriage may be invoked only. . .*
>
> On the other hand, Justice Puno suggested that they say:
>
> *The invalidity of a marriage may be invoked only . . .*
>
> Justice Caguioa explained that his idea is that one cannot determine for himself whether or not his marriage is valid and that a court action is needed. Justice Puno accordingly proposed that the provision be modified to read:
>
> *The invalidity of a marriage may be invoked only on the basis of a final judgment annulling the marriage or*

declaring the marriage void, except as provided in Article 41.

Justice Caguioa remarked that in annulment, there is no question. Justice Puno, however, pointed out that, even if it is a judgment of annulment, they still have to produce the judgment.

Justice Caguioa suggested that they say:

The invalidity of a marriage may be invoked only on the basis of a final judgment declaring the marriage invalid, except as provided in Article 41.

x x x x

Prof. Baviera remarked that the original idea in the provision is to require first a judicial declaration of a void marriage and not annullable marriages, with which the other members concurred. Judge Diy added that annullable marriages are presumed valid until a direct action is filed to annul it, which the other members affirmed. Justice Puno remarked that if this is so, then the phrase 'absolute nullity' can stand since it might result in confusion if they change the phrase to 'invalidity' if what they are referring to in the provision is the declaration that the marriage is void.

Prof. Bautista commented that they will be doing away with collateral defense as well as collateral attack. Justice Caguioa explained that the idea in the provision is that there should be a final judgment declaring the marriage void and a party should not declare for himself whether or not the marriage is void, which the other members affirmed. Justice Caguioa added that they are, therefore, trying to avoid a collateral attack on that point. Prof. Bautista stated that there are actions which are brought on the assumption that the marriage is valid. He then asked: Are they depriving one of the right to raise the defense that he has no liability because the basis of the liability is void? Prof. Bautista added that they cannot say that there will be no judgment on the validity or invalidity of the marriage because it will be taken up in the same proceeding. It will not be a unilateral declaration that it is a void marriage. **Justice Caguioa saw the point of Prof. Bautista and suggested that they limit the provision to remarriage.** He then proposed that Article 39 be reworded as follows:

The absolute nullity of a marriage for purposes of remarriage may be invoked only on the basis of final judgment . . .

Justice Puno suggested that the above be modified as follows:

The absolute nullity of a previous marriage may be invoked for purposes of establishing the validity of a subsequent marriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.

Justice Puno later modified the above as follows:

For the purpose of establishing the validity of a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final

> *judgment declaring such nullity, except as provided in Article 41.*
>
> Justice Caguioa commented that the above provision is too broad and will not solve the objection of Prof. Bautista. He proposed that they say:
>
> *For the purpose of entering into a subsequent marriage, the absolute nullity of a previous marriage may only be invoked on the basis of a final judgment declaring such nullity, except as provided in Article 41.*
>
> Justice Caguioa explained that the idea in the above provision is that if one enters into a subsequent marriage without obtaining a final judgment declaring the nullity of a previous marriage, said subsequent marriage is void *ab initio*.
>
> After further deliberation, Justice Puno suggested that they go back to the original wording of the provision as follows:
>
> *The absolute nullity of a previous marriage may be invoked for purposes of remarriage only on the basis of a final judgment declaring such previous marriage void, except as provided in Article 41.*[47] (Emphasis and italics supplied)

It is worthy to note that the Court laid down its ruling in *Domingo* through Associate Justice Flerida Ruth Romero, who was a member of the Family Code and Civil Code Revision Committees.

It is thus clear that in cases where the validity of marriage is collaterally attacked for purposes of succession, A.M. No. 02-11-10-SC shall not apply. This is confirmed no less by the *Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders* (*Rationale of the Rules*), which states:

> Only an aggrieved or injured spouse may file a petition for annulment of voidable marriages or declaration of absolute nullity of void marriages. Such petition cannot be filed by compulsory or intestate heirs of the spouses or by the State. The Committee is of the belief that they do not have a legal right to file the petition. **Compulsory or intestate heirs have only inchoate rights prior to the death of their predecessor, and hence can only question the validity of the marriage of the spouses upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in the regular courts.** On the other hand, the concern of the State is to preserve marriage and not to seek its dissolution. x x x[48] (Emphasis supplied)

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47 Id. at 649-652.

48 *Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders* as cited in *Enrico v. Heirs of Spouses Medinaceli*, 560 Phil. 673, 683 (2007) [Third Division, per *J.* Chico-Nazario].

The *Rationale of the Rules* draws a distinction between a "petition for annulment of voidable marriages or declaration of absolute nullity" on one hand, and an action assailing the validity of a predecessor's marriage for the purpose of determining successional rights, on the other. The former is a direct action assailing the validity of marriage that is governed by A.M. No. 02-11-10-SC and pertains exclusively to the aggrieved or injured spouse. The latter pertains to a collateral attack against the validity of a predecessor's marriage brought in a proceeding for the settlement of the latter's estate in accordance with the procedure set forth in the Rules.

II. *Lucila may recover her share in the Sunset Valley Estate through a separate action for partition*

As a stranger to Rene's estate, Lucila does not have standing to participate in the Settlement Proceeding as heir. Nevertheless, Lucila's right to recover her share as co-owner of the Sunset Valley Estate subsists. Lucila may thus recover said share by filing a separate action for partition of the Sunset Valley Estate against the administrator of Rene's estate consistent with Section 1, Rule 87 of the Rules:

> SECTION 1. *Actions which may and which may not be brought against executor or administrator.* — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; **but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal**, may be commenced against him. (Emphasis supplied)

The filing of separate action under Section 1, Rule 87 is necessitated by the limited scope of the trial court's jurisdiction in estate settlement proceedings. The Court's ruling in *Pacioles, Jr. v. Chuatoco-Ching*[49] is instructive:

> The general rule is that the jurisdiction of the trial court either as an intestate or a probate court relates only to matters having to do with the settlement of the estate and probate of will of deceased persons but does not extend to the determination of questions of ownership that arise during the proceedings. The patent rationale for this rule is that such court exercises special and limited jurisdiction.
>
> A well-recognized deviation to the rule is the principle that an intestate or a probate court may hear and pass upon questions of ownership when its purpose is to determine whether or not a property should be included in the inventory. In such situations the adjudication is merely incidental and provisional. Thus, in *Pastor, Jr. vs. Court of Appeals*, we held:

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[49] 503 Phil. 707 (2005) [Third Division, per *J.* Sandoval-Gutierrez].

> "x x x **As a rule, the question of ownership is an extraneous matter which the probate court cannot resolve with finality. Thus, for the purpose of determining whether a certain property should or should not be included in the inventory of estate properties, the probate court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title.**"[50] (Emphasis supplied; italics omitted)

It must be stressed, however, that Lucila only owns one-half of the Sunset Valley Estate. In turn, one-half of Lucila's share in the Sunset Valley Estate is reserved for the Aguas' heirs' presumptive legitimes. This leaves Lucila with the right to recover one-fourth of the entire Sunset Valley Estate through a separate action for partition.

Based on these premises, I vote to **DENY** the Petition, and affirm the dismissal of Civil Case No. R-ANG-17-03316-CV.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[50] Id. at 715-716.