

EN BANC

[G.R. No. 232579, September 08, 2020]

**DR. NIXON L. TREYES, PETITIONER, VS. ANTONIO L. LARLAR,
REV. FR. EMILIO L. LARLAR, HEDDY L. LARLAR, ET AL.,
RESPONDENTS.**

DECISION

CAGUIOA, J:

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

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

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

The Facts and Antecedent Proceedings

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

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

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

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

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

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

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

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

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

private respondents.^[20]

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

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

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

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

Unsatisfied with the aforesaid Resolution of the RTC, petitioner Treyes filed an Omnibus Motion^[28] dated July 28, 2014 (1) to reconsider the Resolution dated August 15, 2014 and (2) to defer filing of Answer.

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

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

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

The Ruling of the CA

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

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

SO ORDERED.^[33]

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

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

Hence, the instant Petition.

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

The Issue

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

The Court's Ruling

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

I. Improper Venue

Citing Rule 73, Section 1 of the Rules,^[38] petitioner Treyes posits that the correct venue for the settlement of a decedent's estate is the residence of the decedent at the time of her death, which was at No. 1-C, Guatemala Street, Loyola Grand Villas,

Loyola Heights, Katipunan Avenue, Quezon City. Hence, petitioner Treyes maintains that the settlement of her estate should have been filed with the RTC of Quezon City, and not at San Carlos City, Negros Occidental.

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

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

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

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

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

II. Prescription

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

The Court likewise finds this argument to be without merit.

The basis of petitioner Treyes in arguing that the Complaint is already barred by prescription is Rule 74, Section 4 of the Rules,^[44] which states that an heir or other persons unduly deprived of lawful participation in the estate may compel the