

## THIRD DIVISION

[ G.R. No. 206451, August 17, 2016 ]

**ELPIDIO MAGNO, HEIRS OF ISIDRO M. CABATIC, NAMELY: JOSE CABATIC, RODRIGO CABATIC, AND MELBA CABATIC; AND ODELITO M. BUGAYONG, AS HEIR OF THE LATE AURORA MAGNO, PETITIONERS, VS. LORENZO MAGNO, NICOLAS MAGNO, PETRA MAGNO, MARCIANO MAGNO, ISIDRO MAGNO, TEODISTA MAGNO, ESTRELLA MAGNO, BIENVENIDO M. DE GUZMAN, CONCHITA M. DE GUZMAN, SILARY M. DE GUZMAN, MANUEL M. DE GUZMAN AND MANOLO M. DE GUZMAN, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari*, assailing the Decision<sup>[1]</sup> dated July 23, 2012 of the Court of Appeals in CA-G.R. CV- No. 90846, which reversed and set aside the Decision<sup>[2]</sup> dated November 15, 2007 of the Regional Trial Court of Alaminos City, Pangasinan, Branch 54, in Civil Case No. A-1850, and dismissed the complaint for partition on the ground of *res judicata*.

The facts are as follows:

Petitioners Elpidio Magno, heirs of Isidro M. Cabatic, namely: Jose Cabatic, Rodrigo Cabatic, and Melba Cabatic, and Odelito M. Bugayong, as heir of the late Aurora Magno, (***Elpidio Magno, et al.*** ) are the successors-in-interest of Doroteo Magno, who is the legitimate child of Nicolas Magno by his first wife, Eugenia Recaido. On the other hand, respondents Lorenzo, Nicolas, Petra, Marciano, Isidro, Teodista, Estrella, all surnamed Magno, and Bienvenido M., Conchita M., Silary M., Manuel M. and Manolo, all surnamed De Guzman, are the successors-in-interest of Nicetas Magno, Gavino Magno and Nazaria Magno, (***Lorenzo Magno, et al.*** ), who are the legitimate children of Nicolas by her second wife, Camila Asinger.

For easy reference, the following are the successors-in-interest of the late Nicolas Magno:<sup>[3]</sup>

I. Children of the First Marriage with Eugenia Recaido (+)

A. Doroteo Magno, survived by:

1. Teofilo Magno, survived by Jacinta Magno (wife)
2. Jose Magno, survived by Nicanor and Lolita Magno
3. Angela Magno, survived by:
  - a. **Isidro M. Cabatic**, survived by
    - i. **Jose Cabatic**
    - ii. **Rodrigo Cabatic**
    - iii. **Melba Cabatic**
  - b. Felicitas Cabatic

- c. Milagros Cabatic
  - d. Herminio Cabatic.
- 4. Espiridion Magno, survived by:
  - a. Tomas Magno
  - b. **Elpidio Magno**
  - c. **Aurora Magno**, survived by:
    - i. Odelito M. Bugayong
- B. Eduardo Magno (died without issue)

## II. Children of the Second Marriage with Camila Asinger (+)

- A. Nicetas Magno, survived by **Lorenzo Magno**, who was in turn survived by:
  - 1. Antonia Magno (widow)
  - 2. Sheila Magno-Arandia (daughter)
  - 3. Lorelyn Magno-Benas (daughter)
  - 4. Arvin Ray M. delos Santos (grandson)
- B. Gavino Magno, survived by:
  - 1. **Nicolas Magno**, survived by:
    - a. Teresita M. Magno (widow)
    - b. Joselito Magno (son)
  - 2. **Petra Magno**
  - 3. **Marciano Magno**, survived by:
    - a. Rolando Magno (son)
    - b. Rosita M. Fernandez (daughter)
    - c. George Magno (son)
    - d. Gloria M. Ocampo (daughter)
    - e. Josefa M. Garcia (daughter)
    - f. Perlita M. Abarra (daughter)
    - g. Nenita Magno (daughter)
  - 4. Leonido Magno
  - 5. **Isidro Magno**
  - 6. **Teodista Magno**
  - 7. **Estrella Magno**
- C. Nazaria Magno, survived by:
  - 1. **Bienvenido M. de Guzman**
  - 2. **Conchita M. de Guzman-Lopez**, survived by:
    - a. Benjamin Lopez (widower)
    - b. Leila Lopez Tamina (daughter)
    - c. Edgar Lopez (son)
    - d. Joshua Lopez (son)
    - e. Daisy Lopez (daughter)
    - f. Bernardino Lopez (son)
    - g. Abes Lopez (son)
    - h. Dejobe Lopez (son)
  - 3. **Silary M. de Guzman**
  - 4. **Manuel M. de Guzman**
  - 5. **Manolo M. de Guzman**

Gavino Magno, Nicetas, and Nazaria,<sup>[4]</sup> all surnamed Magno, (***Gavino Magno, et al.***), who are the predecessors-in-interest of Lorenzo Magno, *et al*, filed an Amended Complaint dated January 30, 1964 before the Court of First Instance (CFI) of Alaminos, Pangasinan, which was docketed as Civil Case No. A-413. In their

complaint for partition with damages, Gavino Magno, et al. sought the partition of the following properties left by Nicolas Magno who died intestate in 1907:

(a) A parcel of land (unirrigated riceland) located at Lucap, Cayucay, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Two Hundred Seventy-Seven Thousand Twenty-Six (277,026) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4236** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(b) A parcel of land (unirrigated riceland) located at Lucap, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Four Thousand Four Hundred Seventeen (4,417) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4235** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(c) A parcel of land (residential lot) located at Poblacion, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Two Thousand Seven Hundred Five (2,705) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4238**, in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(d) A parcel of land (unirrigated riceland) located at San Jose Dive, Poblacion, Pangasinan, bounded by the properties of the following: x x x; consisting of Five Thousand Four Hundred (5,400) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4237** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(e) A parcel of land (unirrigated rice, sugar, and forest lands), located at Lucap, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of One Hundred Fifty-Six Thousand Five Hundred Forty (156,540) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4233** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(f) A parcel of land (coconut land) located at Lucap, Cayucay, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Three Thousand Two Hundred Forty-Five (3,245) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4234** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Doroteo Magno**;

(g) A parcel of land (unirrigated Riceland) located at Balangobong, Alaminos, Pangasinan, bounded by the properties of the following: x x x; consisting of Eleven Thousand One Hundred Thirty-Two (11,132) Square Meters, more or less, and declared for taxation purposes under **Tax Declaration No. 4241** in 1951 in the Office of the Provincial Assessor of Pangasinan, in the name of **Espiridion Magno**; <sup>[5]</sup>

In their Amended Answer to the Amended Complaint with a Counter-claim<sup>[6]</sup> dated March 4, 1964, Teofilo Magno, Isidro, Herminio and Felicidad, all surnamed Cabatic, Aurora, Elpidio, Tomas, Nicanor and Lolita, all surnamed Magno (***Teofilo Magno, et al.*** ), who are the predecessors-in-interest of Elpidio Magno, et al, denied the material allegations of the amended complaint. By way of counterclaim, Teofilo Magno, et al. also sought the partition of three (3) parcels of land originally owned by Nicolas Magno, as shown by Original Tax Declaration No. 2221 in his name, and described as follows:

**Tax Declaration No. 4246** in the name of **GAVINO MAGNO** and is actually in the possession of Gavino Magno, plaintiff:

A parcel of land containing an area of 84,988 square meters in area situated in the Barrio Lucap, Municipality of Alaminos, Pangasinan, Philippines, x x x.

**Tax Declaration No. 13385** assessed at P390.00 in the name of plaintiff, **Necitas Magno** described as follows:

A parcel of land situated in the Barrio of Lucap, Municipality of Alaminos, Pangasinan, containing an area of about 38,385 sq. m. x x x.

**Tax Declaration No. 4249** in the name of plaintiff **NAZARIA MAGNO** and also under her actual possession, to wit:

A parcel of land situated in the Barrio of Lucap, Mun. of Alaminos, Pangasinan containing an area of 41,023 sq. m. more or less, x x x.<sup>[7]</sup>

On October 5, 1972, CFI of Pangasinan, Branch VII,<sup>[8]</sup> granted the amended complaint of Gavino Magno, et al., but failed to include in the dispositive portion of its Decision<sup>[9]</sup> three (3) real properties covered by Tax Declaration Nos. 4246, 4249, and 13385 subject of the counterclaim of Teofilo Magno, et al. The *fallo* of the Decision reads:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby declared as follows:

- a) **Declaring the plaintiffs [Gavino Magno, et al. ] and the defendants [Teofilo Magno, et al. ] as legal heirs of the deceased Nicolas Magno and consequently, the absolute and exclusive owners of the properties described in the amended complaint, except the parcel of land described in paragraph (3), subparagraph (e) of said amended complaint.**
- b) Ordering the partition of said properties in four (4) equal parts as follows: one share each of the plaintiffs, Gavino, Nicetas and Nazaria, all surnamed Magno, and the fourth share to the defendants who represent the deceased Doroteo Magno;
- c) Declaring the property described in paragraph (3), sub-

paragraph (e) as the exclusive property of the heirs of the deceased spouses, Doroteo Magno and Monica Romero;

- d) Ordering the defendants to account for the annual income or produce of the above-mentioned properties with the exception of the property described in the preceding paragraph, and to divide the same into four (4) equal parts in the manner above-described, commencing from 1957 until the accounting is made and the shares corresponding to the plaintiffs delivered;
- e) Ordering the defendants to pay, jointly and severally, the plaintiffs in the sum of P3,000.00 as attorney's fees. And the costs.

SO ORDERED.<sup>[10]</sup>

On June 30, 1981, the Court of Appeals (CA), 9<sup>th</sup> Division, rendered a Decision<sup>[11]</sup> affirming the decision of the CFI. The CA ruled, among other matters, that the lands covered by Tax Declaration Nos. 4246, 4249, and 13385 were owned by the late Nicolas Magno and must be brought into the mass of his estate. But, the CA also failed to order their partition in the dispositive portion of its decision which reads:

WHEREFORE, the Decision appealed from, being in accord with evidence and law, is hereby affirmed in all parts. With costs against the defendants-appellants.

SO ORDERED.<sup>[12]</sup>

In an Entry of Judgment<sup>[13]</sup> dated September 25, 1981, the Clerk of Court certified that the CA Decision has become final and executory on September 22, 1981.

Meanwhile, on October 14, 1981, Gavino Magno, *et al.* filed a Motion for Execution, which the CFI granted. Teofilo Magno, *et al.* filed a motion for reconsideration which the CFI denied on October 19, 1981.

Aggrieved, Teofilo Magno, *et al.* filed a petition for *certiorari* with preliminary injunction before the Supreme Court which issued a temporary restraining order against the CA and Gavino Magno, *et al.* on January 6, 1982. In a Decision<sup>[14]</sup> dated July 31, 1987, the Court dismissed the petition for lack of merit and lifted its restraining order. The Court ruled that the CA committed no error in ordering the issuance of the entry of judgment, and that the CA decision has become final and executory, there being no appeal taken therefrom. On November 2, 1987, it issued an Entry of Judgment in G.R. No. 58781 entitled *Teofilo Magno, et al. v. Court of Appeals, et al.*

On December 8, 1987, Gavino Magno, *et al.* filed a Motion for Issuance of Alias Writ of Execution. On December 15, 1987, the Regional Trial Court (RTC) of Pangasinan, Branch 54,<sup>[15]</sup> ordered the issuance of an alias writ of execution.

On January 27, 1988, Gavino Magno, *et al.* filed an Urgent Motion for Partition and