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WHEREFORE, the appealed decision dated August 8, 1974 in Criminal Cases Nos. 753, 754 and 755 of the Court of First Instance of Quezon, Branch I, now respectively L-39367, L-39368 and L-39369, sentencing the accused to the penalty of *reclusion perpetua* in each one of them, is hereby affirmed. Costs against appellant.

Barredo, Antonio, Aquino, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-41107. February 28, 1979]

AMANDA L. VDA. DE DELA CRUZ, *ET AL.*, *petitioners*, *vs.* HON. COURT OF APPEALS, MARCELO ABAGA, MARGARITA D. JOSE, MARTINA D. JOSE, QUIRINO D. JOSE, TEOFILO D. JOSE, *ET AL.*, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; SUBSTITUTION OF PARTIES; APPLICABLE TO A COMPLAINT FOR EJECTMENT OF AGRICULTURAL LESSEES.** — The provisions of Rule 17, Sec. 3 of the Rules of Court which provides for substitution of parties in actions which survive are applicable to a complaint for ejectment of agricultural tenants, since an action is not extinguished on account of Sections 9, Rep. Act 1199 (Rep. Act 6389, Code of Agrarian Reforms), which provides in effect that in case of death or permanent incapacity of the agricultural lessee, the leasehold shall continue between the lessor and the persons enumerated in said section which include the descendants of the deceased.

2. **ID.; ID.; ID.; ID.; EFFECT OF LACK OF SUBSTITUTION.** — The continuance of a proceeding during the pendency of which a

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party thereto dies, without such party having been validly substituted in accordance with the rules, amounts to lack jurisdiction. Assuming that jurisdiction was acquired at the outset over the defendant, it was inevitably impaired on his death pending the proceedings such that unless and until a legal representative is for him duly named and within the jurisdiction of the court, no adjudication in the cause could be accorded any validity or binding effect on any party, in representation of the deceased, without trenching upon the fundamental right to a day court which is the very essence of the constitutionally enshrined guarantee of due process.

3. **ID.; ID.; ID.; ID.; BASED ON RIGHT TO DUE PROCESS.** — The need for substitution is based on the right of a party to due process. One may infer from the use of the word "shall" in Rule 3, Sec. 17, Revised Rules of Court that substitution is indeed a mandatory requirement in actions surviving the deceased. And in statutes relating to procedure, every act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected, is mandatory.

4. **ID.; ID.; ID.; ID.; SHOULD BE ORDERED EVEN AFTER JUDGMENT.** — Substitution should be ordered even after judgment has been rendered since proceedings may still be taken, like an execution; and the legal representative must appear to protect the interests of the deceased and in all such proceedings.

5. **ID.; ID.; APPEAL; FINDINGS OF FACTS OF COURT OF APPEALS; RULE AND EXCEPTIONS.** — In a petition for review on *certiorari*, where only questions law may be raised, the findings of facts by the Court of Appeals are in general, final and conclusive, except when (1) the conclusion is a finding grounded entirely on speculation; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is a grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the Court of Appeals in making its findings, went beyond the issues of the case and the same are contrary to the submission of both appellant and appellee.

6. **ID.; ID.; ID.; DISMISSAL OF APPEAL; EFFECT IN CASE OF LACK OF SUBSTITUTION OF PARTIES.** — The dismissal of the appeal by the Supreme Court for failure of the petitioners

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to file their brief or memorandum within the prescribed period could not bar the heirs of the deceased from questioning all the proceedings, particularly if the fact is considered that there could not have been a final judgment on the merits since in the first place, jurisdiction over the deceased defendant was lacking in the lower court, since no substitution was effected after the death of deceased.

APPEARANCES OF COUNSEL

Angel C. Ungson, Jr. for petitioner.

Juan J. de Dios and Simplicio M. Sevilleja for private respondents.

D E C I S I O N

DE CASTRO, *J.*:

This is a petition for *certiorari* seeking to review the decision of the Court of Appeals in case CA-G.R. No. 47331-R entitled "*Amanda L. Vda. de dela Cruz, et al., plaintiffs-appellees, versus Marcelo Abaga, Margarita D. Jose, et al., defendants.*" The questioned decision ordered the setting aside of the decision rendered by the Court of Agrarian Relations in CAR Case No. 115-TP-59 and 116-TP-59 and proceedings subsequent thereto insofar as it affected the deceased defendant Felix Jose or his heirs, the private respondents in this petition.

As narrated by the Court of Appeals in its decision, it appears that plaintiffs (herein petitioners) filed an action for ejectment and collection of unpaid rentals against Felix Jose and 114 other tenants on November 23, 1959 in the Court Agrarian Relations, Tayug, Pangasinan. Their complaint alleged that Felix Jose is a tenant over a 4.5 ha. landholding in plaintiffs' hacienda in Tayug, Pangasinan, paying a fixed rental of 850 kilos of palay per hectare per agricultural year; that he failed to pay in full his rentals and despite plaintiffs' repeated demands, Felix Jose refused to vacate the landholding and to pay his obligation.[1] In

[1] pp. 20-23. *Rollo.*

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a joint answer filed through their counsel, Atty. Fausto G. Cabotaje, defendant Felix Jose and his 114 co-defendants denied the material averments of the complaint, alleging payment of all the rentals of their respective landholdings. Thereafter, trial was commenced. However, as found by the Court of Appeals, "before termination thereof, or on June 5, 1961, Felix Jose died at the Eastern Pangasinan Provincial General Hospital in Tayug, Pangasinan (Record, Vol. 1, p. 509). It appears that Jose's demise, no substitution of defendant was effected."[2]

Then on March 29, 1962, the trial court rendered judgment against Felix Jose together with the other defendants holding him liable to plaintiffs for 6,432 kilos of palay as unpaid rentals. Some of his co-defendants then brought the case to the Supreme Court for review on *certiorari* where it was docketed as G. R. No. L-19930-19935. However, the petition was dismissed on November 30, 1962 due to the petitioners' failure to file their brief (Appellee's Brief, pp. 2-8). Thereafter on plaintiffs' motion, the Court of Agrarian Relations issued an order of execution (Appendix B of Appellant's Brief, pp. 54-60). On May 3, 1963, a writ of execution to effect ejectment was entered (Appendix C, Appellants' Brief, pp. 60-69). To satisfy the award of damages under the decision of the Court of Agrarian Relations, the conjugal properties of the deceased Felix Jose and his wife were sold at public auction. A certificate of sale dated July 31, 1969 was later issued in favor of plaintiff Amanda L. *Vda.* de la Cruz as highest bidder. The sheriff's final deed of sale followed on August 17, 1970.

On October 27, 1970, the heirs of the deceased defendant, through their new counsel, Atty. Juan V. Landingin, filed a motion to substitute the deceased and to set aside as null and void the decisions, orders, writ of execution and sale at public auction made and entered against the latter. The trial court allowed the substitution "for the purposes of whatever proceedings may still be allowed in this case" (p. 23, *rollo*) but denied the motion to set aside the decision, orders, writ of execution and

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[2] Appendix A. Petitioners' Brief. pp. 19-20.

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the public auction sale. The motion for reconsideration was likewise denied. The substituted defendants then appealed to the Court of Appeals, raising mainly the question of the validity of the lower court's decision on the ground that despite it's awareness of the death of said defendant, no substitution was ordered before decision was rendered on March 29, 1962.

The Court of Appeals found the appeal meritorious. Against its decision, a motion for reconsideration was filed but was denied. Hence, this petition for review on *certiorari*, alleging mainly that the Court of Appeals erred:[3]

1. "in entertaining an appeal from the order of the Court of Agrarian Relations, in reversing the decision of the Court of Agrarian Relations of March 29, 1962, setting aside the same and the auction sale of July 2, 1969, the certificate of sale dated July 31, 1969, and the final deed of sale of August 17, 1970," with respect to Felix Jose, considering that a period of more than eight (8) years had elapsed from the rendition of the decision of the trial court to the filing of the motion for substitution:

2. "in not considering the decision of the Supreme Court in cases G.R. Nos. L-19930-19935 as having the effect of *res judicata*, based not only on the general application of the rule but on the basis of the agreement of the parties before the Court of Agrarian Relations that the cases be heard jointly and one decision for all the cases is sufficient.

3. "in finding that the trial was still going on and not yet terminated when Felix Jose died on June 5, 1961, and that the continuance of the trial after the death of defendant, without such party having been substituted in accordance with the aforesaid Rule amounts to lack of jurisdiction."

To begin with, the Court of Appeals found that the defendant Felix Jose died before the termination of the trial, contrary to petitioner's claim that when said defendant died, the trial was already terminated (pp. 11, *rollo*), and hence, there was no denial of due process. Whether defendant died before or after termination of trial is not all that important because one thing

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[3] Brief for the Petitioners, pp. 2-4.

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is certain; that he died before the rendition of judgment. This fact was known to the Judge of the Court of Agrarian Relations (Appellant's Brief, pp. 48-49), who in his decision placed the word "dead" in parenthesis beside the name of Felix Jose (Appendix A, Appellants' Brief, p. 49). The Court of Appeals took this into consideration when it held that the decision of said court was a "patent nullity" insofar as Felix Jose was concerned. As stated by the Appellate Court, no substitution of the deceased was ordered by the trial court, in disregard of the provisions of Rule 3, Sec. 17, Rules of Court which read thus:

> SEC. 17. Death of a party. After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs.

In *Caseñas vs. Rosales* (19 SCRA 466). *Caisip vs. Cabangon* (109 Phil, 154) and *Bonilla vs. Barcena* (71 SCRA 495), this Court held that in case of the death of a party and due notice is given to the trial court, it is the duty of the court to order the legal representative of the deceased to appear for him, in the manner outlined in the aforementioned Rule. Considering that the complaint was for ejectment of the tenants, (defendant, being one of them) the provisions of said section and the rulings in the aforementioned cases are indeed applicable to the present case, where the action or the claim is not extinguished account of Section 9, RA 1199, (now RA 6389, Code of Agrarian Reforms) which provides in effect that in case of death or permanent incapacity of the agricultural lessee, the leasehold

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shall continue between the lessor and the persons enumerated in said Section which include the descendants of the deceased. But as noted by the Court of Appeals:[4] "it appears that no legal representative was ever summoned to appear in court; that no legal representative appeared to be substituted; and that the plaintiffs did not procure the appointment of such legal representatives." As a result, the "continuance of a proceeding during the pendency of which a party thereto dies, without such having been validly substituted in accordance with the rules, amounts to lack of jurisdiction."[5] The same ruling was given in the earlier case of *Ferreria vs. Gonzales* (104 Phil. 143), where this Court set aside the decision of the Court of Agrarian Relations because "no valid substitution was effected, consequently, the court never acquired jurisdiction over appellant for the purpose of making the decision binding upon her either personally or as legal representative of the estate of her deceased mother." Assuming that jurisdiction was ever acquired at the outset over defendant Felix Jose, it was:

"inevitably impaired on the death of the protestee pending the proceedings below such that unless and until a legal representative is for him duly named and within the jurisdiction of the trial court, no adjudication in the cause could have been accorded any validity or binding effect on any party, in representation of the deceased, without trenching upon the fundamental right to a day in court which is the very essence of the constitutionally enshrined guarantee of due process."[6]

The need therefore for substitution is based on the right of a party to due process. Summing up then the previous ruling of this Court in the afore-cited cases, and noting that Rule 3, Sec. 17, Revised Rules of Court uses the word "shall,' one infers that substitution is indeed a mandatory requirement in actions surviving the deceased. It has been held that in "statutes relating to procedure . . . every act which is jurisdictional, or

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[4] p. 26. *Rollo.*

[5] *Caseñas vs. Rosales*, 19 SCRA 496-497.

[6] *Vda. de Mesa vs. Mencias*, 18 SCRA 540.

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of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected, is mandatory."[7] The petitioners, however, take the contrary view, pointing to the case of *Lota vs. Tolentino* (90 Phil. 831) to argue that the said section involves only a procedural requirement (Petitioners' Brief, p. 16). A reading of the said case shows that the nature of the action filed by the plaintiff was purely personal since it was for accounting and liquidation of the partnership, and on defendant's death, the claim we extinguished.

In any case, substitution should be ordered even after judgment has been rendered since proceedings may still be taken — as was done in this case — like an execution; and the legal representative must appear to protect the interests of the deceased and in all such proceedings.[8] In this instance, however, the Court of Appeals found that there is "no showing that the appellants were notified of the decision dated March 29, 1962 or of the auction sale held thereafter."[9] Petitioners take issue with the Appellate Court on this point. But since the present petition is for review on *certiorari*, where "only questions of law may be raised," (R. 45, Sec. 2, Revised Rules of Court), this Court has held in a number of cases that findings of facts by the Court of Appeals are: in general, final and conclusive (*Chan vs. Court of Appeals*, 33 SCRA 737; *Ramirez Te. Corp. vs. Bank of America*, 32 SCRA 191; *Castro vs. Tamporong*, 78 Phil. 804 to name a few), except when:[10]

1. the conclusion is a finding grounded entirely on speculation,
2. the inference made is manifestly mistaken; absurd or impossible;
3. there is a grave abuse of discretion;
4. the judgment is based on a misapprehension of facts;
5. the Court of Appeals is making its findings, went beyond the issues of the case and the same are contrary to the submission of both appellant and appellee.

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[7] *Ibid.*, p. 542, citing Gonzaga, *Statutes & Their Construction*, p. 98.

[8] Moran, *Rules of Court*, 1970 Ed. Vol. I, p. 208.

[9] Brief for Petitioners, Appendix A, p. 24.

[10] *Ramos vs. Court of Appeals*, 63 SCRA 331.

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None of the above exceptions however applies to the case at bar, so there is no reason to disturb the findings of the Court of Appeals.

Petitioners also contend that since two of the private respondents were co-respondents with their father in the complaint before the Court of Agrarian Relations, petitioners "believe that they were supposed to have represented their father in the appeal to the Supreme Court." Likewise, they maintain that the decision of the Court in the said appeal operated as *res judicata* on all matters which might have been litigated and decided before the judgment became final (pp. 7-9, *rollo*).

With reference to the first objection, it is worthy to note that the herein private respondents were sued in their individual capacity for their separate and respective obligations. The dismissal of the appeal by the Supreme Court for failure of the petitioners to file their brief or memorandum within the prescribed period could not, therefore, bar the heirs of the deceased from questioning all the proceedings, particularly if the fact is considered that there could not have been a final judgment on the merits since in the first place, jurisdiction over the deceased defendant was lacking in the lower court, as heretofore shown. Accordingly there can be no *res judicata* as contended by petitioner.[11]

IN VIEW OF THE FOREGOING, We hereby affirm the decision of the Court of Appeals. No pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio Herrera, JJ.*, concur.

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[11] The second requisite of res judicata is that the Court rendering the final judgment or order must have jurisdiction over the subject matter and over the parties. See *Dacosin vs. Court of Appeals*, 80 SCRA 89; *Municipality of Hagonoy vs. Secretary of Agriculture and Natural Resources*, 73 SCRA 507; *Philippine Commercial and Industrial Bank vs. Pfleider*, 65 SCRA 13.