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.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JUDGMENTS; REQUISITES IN ORDER FOR *RES JUDICATA* TO BAR THE INSTITUTION OF A SUBSEQUENT ACTION.— In order for *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be, as between the first and second actions, identity of parties, subject matter, causes of action as are present in the civil cases below.

2. ID.; ID.; ID.; WRIT OF EXECUTION; A WRIT OF EXECUTION MUST SUBSTANTIALLY CONFORM TO THE DISPOSITIVE PORTION OF THE PROMULGATED DECISION, AND CANNOT VARY OR GO BEYOND THE TERMS OF JUDGMENT; CASE AT BAR.— It is well settled that a writ of execution must substantially conform to the dispositive portion of the promulgated decision, and cannot vary or go beyond the terms of the judgment; otherwise, it becomes null and void. Here, it is undisputed that both the bodies of the CFI Decision in Civil Case No. A-413 and the CA Decision upholding the CFI, confirmed that the three (3) undivided

properties belong to the late Nicolas Magno, but they were not included in the dispositive portions of said decisions as part of the properties that were ordered to be partitioned among his heirs. Thus, it would be pointless to require Elpidio Magno, *et al.* to file a motion for execution, because the trial court will simply deny it for the reason that the only portion of its final decision that becomes the subject of execution, is that ordained in the dispositive portion.

3. **ID.; ID.; ID.; WHEN FINAL JUDGMENT BECOMES EXECUTORY, IT BECOMES IMMUTABLE AND UNALTERABLE, RATIONALE.—** Needless to state, when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

4. **ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON IMMUTABILITY OF FINAL AND EXECUTORY JUDGMENTS, CITED.—** Be that as it may, there are three (3) recognized exceptions to the rule on the immutability of final and executory judgments, namely, (a) the correction of clerical error; (b) the making of so-called *nunc pro tunc* entries which cause no prejudice to any party; and (c) where the judgment is void.

APPEARANCES OF COUNSEL

Millora & Maningding Law Offices for petitioners.
Manuel F. Manuel for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*, assailing the Decision[1] dated July 23, 2012 of the Court of Appeals in CA-G.R. CV- No. 90846, which reversed and set aside the Decision[2] 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:[3]

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

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring; *rollo,* pp. 36-52.

[2] Penned by Judge Jules A. Mejia; *id.* at 101-122.

[3] CA *rollo,* pp. 88, 94-95, 100-102; See Decision dated November 15, 2007 of the RTC of Alaminos City, Pangasinan, Branch 54, pp. 2, 8, 9, 14, 15.

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,[4] 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**;

[4] Assisted by her husband Simeon de Guzman.

(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**;[5]

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[5] CA *rollo*, pp. 110-111. (Emphases added)

In their Amended Answer to the Amended Complaint with a Counter-claim[6] 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 ₱390.00 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.[7]

On October 5, 1972, CFI of Pangasinan, Branch VII,[8] granted the amended complaint of Gavino Magno, *et al.*, but failed to include in the dispositive portion of its Decision[9] 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:

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[6] Records, pp. 154-158.

[7] *Id.* at 156-157.

[8] Penned by Judge Gregorio A. Legaspi.

[9] *Rollo*, pp. 63-99.

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), sub-paragraph (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 ₱3,000.00 as attorney's fees. And the costs.

SO ORDERED.[10]

On June 30, 1981, the Court of Appeals (*CA*), 9th Division, rendered a Decision[11] 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

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[10] *Id.* at 98-99. (Emphasis added)

[11] CA *rollo*, pp. 154-166; penned by Associate Justice Porfirio V. Sison, with Associate Justices Elias B. Asuncion and Juan A. Sison, concurring.

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.[12]

In an Entry of Judgment[13] 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[14] 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,[15] ordered the issuance of an alias writ of execution.

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[12] CA *rollo,* p. 166.

[13] *Id.* at 167.

[14] *Id.* at 168-173; *Magno v. Court of Appeals,* 236 Phil. 595, 599 (1987).

[15] Presided by Judge Artemio R. Corpuz.

On January 27, 1988, Gavino Magno, *et al.* filed an Urgent Motion for Partition and Accounting. On May 4, 1989, the RTC ordered the setting of the case for hearing on the urgent motion for partition and accounting, and for purposes of appointing commissioners which shall make the necessary partition of the lands.

On August 23, 1989, Teofilo Magno, *et al.* filed a Motion to Reopen, alleging that there are real properties of Nicolas Magno in the possession of Gavino Magno, *et al.* that have not been reported to the court, and should be collated so that the whole inheritance can be partitioned by the heirs. On February 8, 1990, Teofilo Magno, *et al.* filed an Urgent Motion for Reconsideration with respect to the true nature of the inventory of the properties left by Nicolas Magno, and for them to be allowed to submit an inventory thereof.

On June 8, 1990, the RTC issued an Order which, among other matters, ruled that the only portion of the decision that becomes the subject of execution, is that ordained in the dispositive portion of the decision; thus, he denied the motion for reconsideration filed by Teofilo Magno, *et al.* On June 11, 1990, the RTC also denied for lack of merit the motion to reopen filed by them.

Meanwhile, Elpidio Magno, *et al.*,[16] the successors-in-interest of Teofilo Magno, *et al.*, filed before the RTC of Alaminos, Pangasinan, a Complaint[17] dated May 24, 1990 for partition, accounting and damages. In their complaint docketed as Civil Case No. A-1850, Elpidio Magno, *et al.* alleged that aside from the real properties subject of Civil Case No. A-413, Nicolas Magno also left three (3) real properties covered by Tax Declaration Nos. 4246, 4249 and 13385, which were in the possession of Gavino, Nazaria and Necitas, all surnamed Magno, and now in possession of their respective successors-in-interest,

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[16] Elpidio, Aurora, Tomas, Lolita, Nicanor, and Jacinta, all surnamed Magno, and Isidro M. Cabatic, Heirs of Jose Cabatic, Milagros, Rodrigo, Melba, Felicitas M. and Herminio M., all surnamed Cabatic.

[17] Records, pp. 1-6.

Lorenzo Magno, *et al*.[18] Claiming to be among the co-heirs of Nicolas Magno, Elpidio Magno, *et al*. averred that Lorenzo Magno, *et al.* refused to partition the said three (3) properties, and to account for their fruits since 1957 up to present, despite repeated demands.

In their Motion to Dismiss[19] dated August 4, 1990, Lorenzo Magno, *et al.* contended that the cause of action of Elpidio Magno, *et al.* is barred by a prior final judgment in Civil Case No. A-413, prescription and laches. In an Order[20] dated April 3, 1991, the RTC denied the motion for lack of merit.

In their Answer with Counterclaim[21] dated September 3, 1991, Lorenzo Magno, *et al.* averred that their refusal to partition the properties is founded on the open, continuous, exclusive and adverse possession in the concept of owner by their predecessor-in-interest, Gavino, Nazaria and Necitas, all surnamed Magno. By way of special defense, Lorenzo Magno, *et al.* reiterated that the cause of action of Elpidio Magno, *et al.* is barred by *res judicata*, prescription and laches.

In the Amended Complaint[22] dated July 1, 1992, Elpidio Magno, *et al.* stressed that the three (3) real properties described in their complaint were all acquired during the first marriage of Nicolas with Eugenia Recaido.

In their Motion to Dismiss[23] dated December 7, 1995, Lorenzo Magno, *et al.* argued that the trial court has no jurisdiction to correct or amend the decision in Civil Case No. A-413 which had already become final and executory, pursuant to the doctrine of *res judicata.*

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[18] Lorenzo, Nicolas, Petra, Marciano, Isidro, Teodista, Estrella, all surnamed Magno, and Bienvenido M., Conchita M., Silary M. and Manolo M., all surnamed De Guzman.

[19] Records, pp. 14-21.

[20] *Id.* at 41-43.

[21] *Id.* at 95-99.

[22] *Id.* at 117-123.

[23] *Id.* at 141-153.

On November 15, 2007, the RTC of Alaminos City, Pangasinan, Branch 54, granted the amended complaint of Elpidio Magno, *et al.* The *fallo* of its Decision reads:

> WHEREFORE, in consideration of the foregoing premises, considering that these three parcels of land were acquired by the deceased Nicolas Magno and his first wife, Eugenia Recaido, the plaintiffs, therefore, are entitled to one-half of each of the three parcels of land as the share of his first wife, Eugenia Recaido, or her heirs while the other half owned by Nicolas Magno be divided into four shares, three shares to the defendants and one share to the plaintiffs.
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> Further, the Court finally orders the accounting of all the total value of fruits and produce of the three described parcels of land from 1957 up to the present time and to deliver to the plaintiffs their respective shares pertaining to them.
>
> Finally, the court orders the defendants to pay severally and jointly the plaintiffs actual damages and attorney's fees in the total sum of ONE HUNDRED THOUSAND (Php100,000.00) PESOS.
>
> IT IS SO ORDERED.[24]

On July 23, 2012, the CA Sixth Division rendered a Decision in CA-G.R. CV No. 90846, the dispositive portion of which states:

> **WHEREFORE**, the instant appeal is **GRANTED** and the appealed Decision is **REVERSED** and **SET ASIDE**. A new one is entered **DISMISSING** the complaint.
>
> **SO ORDERED**.[25]

Aggrieved, Elpidio Magno, *et al.* filed this petition for review on *certiorari*.

Elpidio Magno, *et al.* submit that the CA committed grave and serious reversible errors, thus:

> a- in holding that the finality of the decision in Civil Case No. A-413 operates as *res judicata* in the second case (Civil

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[24] *Rollo,* pp. 121-122.

[25] *Id.* at 51. (Emphasis in the original)

Case No. A-1850), despite that there is no identity of the subject matter between the two cases.

b- in concluding that the decision in the first case, which has become final and executory, should have been executed to effect the partition of the subject properties, notwithstanding that only the dispositive portion, of the *fallo* is its decisive resolution, and is thus the subject of execution.

c- in dismissing Civil Case No. A-1850, without regard to the right to demand partition of the thing owned in common, as mandated in Art. 494 of the New Civil Code.[26]

Elpidio Magno, *et al*. admit that the subject three (3) properties covered by Tax Declaration Nos. 13385, 4246 and 4249 were among those stipulated as properties of Nicolas Magno, and lengthily discussed in the body of the CFI Decision in Civil Case No. A-413, but were not included in the dispositive portion of its decision. They stress that while the said decision was affirmed by the CA in G.R. CV No. 52655-R when it ruled *inter alia* that such properties ought to be brought into the mass of Nicolas Magno's estate, the CA likewise failed to include the said properties in the dispositive portion of its decision. Thus, Elpidio Magno, *et al*. submit that *res judicata* cannot be applied because there is no identity of subject matter between Civil Case No. A-413 where their predecessors-in-interest, Teofilo Magno, *et al*. had sought by way of counterclaim for partition of the said properties, and Civil Case No. 1850 where they prayed for partition of the same properties, which were omitted in the dispositive portion of the decisions of the CFI and the CA.

Elpidio Magno, *et al.* further argue that to deny their right to demand partition of properties which remain co-owned by them and Lorenzo Magno, *et al.* on the ground of *res judicata* would sacrifice justice to technicality. Citing Article 494[27] of the New Civil Code, they also claim to have the right to demand

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[26] *Id.* at 26-27.

[27] Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

partition of said properties at any time. They likewise invoke Article 1103[28] of the same Code in support of their claim that a decision or order of partition does not really become final in the sense that it leaves something more to be done for the complete disposition of the case. They insist that Lorenzo Magno, *et al.* should not be allowed to exclusively appropriate the properties owned in common for they hold the same in trust for the other co-owners; otherwise, there would be unjust enrichment at the expense of their co-owners. Finally, they submit that the finding of the CA to the effect that the subject properties were owned by the late Nicolas Magno and must be brought to the mass of his estate, becomes the law of the present case which must not be disturbed as a matter of judicial comity.

On the other hand, respondents argue that the filing of another complaint for partition [Civil Case No. A-1850] cannot be sanctioned without doing violence to the doctrine of *res judicata*, but also to the rule on immutability of judgments.

The petition lacks merit.

The Court has explained[29] the doctrine of *res judicata* and its two (2) concepts, thus:

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

[28] Art. 1103. The omission of one or more objects or securities of the inheritance shall not cause the rescission of the partition on the ground of lesion, but the partition shall be completed by the distribution of the objects or securities which have been omitted.

[29] *Samson v. Gabor, et al.,* G.R. No. 182970, July 23, 2014, 730 SCRA 490.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to litigation — *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause — *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine would subject public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of public tranquility and happiness.

Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). These concepts differ as to the extent of the effect of a judgment or final order as follows:

> SEC. 47. *Effect of judgments or final orders.* - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> xxx xxx xxx
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

> (c) In any other litigation between the same parties or their successors-in-interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein.[30]

In order for *res judicata* to bar the institution of a subsequent action, the following requisites must concur: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be, as between the first and second actions, identity of parties, subject matter, causes of action as are present in the civil cases below.[31] All four requisites of *res judicata* under the concept of bar by prior judgment are present in this case.

As correctly noted by the CA, the presence of the first two requisites of *res judicata*, as well as the requisite identity of parties in the first action (Civil Case No. A-413) and the second action (Civil Case No. A-1850), are undisputed:

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[30] *Id.* at 504-506. (Citations omitted)

[31] *Id.* at 503.

x x x [R]ecords show that herein parties do not dispute the fact that the **trial court has jurisdiction over the first case** (Civil Case No. A-413) and that **such decision in the first case has long become final and executory** on September 22, 1981 by virtue of the Entry of Judgment dated September 25, 1981. There is also no question with respect to the identity of parties in both civil cases. Obviously **there is also a community of interest between the parties in both the first and the present case** [Civil Case No. A-1850], being the legitimate heirs of Nicolas Magno, although, the parties in the present case, by right of representation, merely substituted some of the original parties in the first case who already died. x x x.[32]

With respect to the third requisite of *res judicata*, there is no question that the Decision[33] of the CFI, dated October 5, 1972, granting the amended complaint for partition docketed as Civil Case No. A-413, is a judgment on the merits, because it was rendered based on the evidence and stipulations submitted by the parties and the witnesses they presented at the trial of the case.

Anent the fourth requisite of *res judicata*, there is also no doubt as to the identity of the subject matter and causes of action between the first action and the second action. Contrary to the contention of Elpidio Magno, *et al*., the subject matters of partition in both actions are the same three (3) real properties originally owned by the late Nicolas Magno, and later declared for taxation purposes under Tax Declaration Nos. 4246, 4249 and 13385. In their Amended Answer to the Amended Complaint with a Counterclaim in Civil Case No. A-413, Teofilo Magno, *et al*., the predecessors-in-interest of Elpidio Magno, *et al*., alleged by way of counterclaim as follows:

2. That the deceased NICOLAS MAGNO was the original owner of the following parcels of land as shown by Original Tax Declaration No. 2221 in his name, and which parcels of lands are hereby described as follows:

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[32] *Rollo,* p. 44. (Emphasis ours)

[33] Records, pp. 159-193.

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 of Lucap, Municipality of Alaminos, Pangasinan, Philippines. x x x.

Tax Declaration No. 13385 assessed at ₱390.00 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.[34]

3. That the three parcels of land of about 16 hectares total area being the original property of the deceased NICOLAS MAGNO common ancestor of both parties in this case, under law, should be divided into four equal parts, and all the defendants, being descendants by the first wedlock, and therefore should be considered full blood and entitled to double that of the descendants of the second wedlock, it being now difficult to determine under which wedlock, the said properties were acquired, the partition therefrom which would equitative (sic) to the parties would be that ¾ pro-indiviso to the defendants; and ¼ pro-indiviso thereof to the plaintiffs.[35]

On the other hand, in their Amended Complaint in Civil Case No. A-1850, Elpidio Magno, *et al.,* as successors-in-interest of Teofilo Magno, *et al.*, prayed, among other matters, that judgment be rendered "[o]rdering the partition of the above-described parcels of land among the plaintiffs and the defendants, taking into consideration that these parcels of land were acquired

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[34] *Id.* at 156-157. (Emphasis added)

[35] Records, p. 157; Amended Answer to the Amended Complaint with A Counterclaim dated March 4, 1964 (Civil Case No. A-413), p. 4.

during the first marriage; x x x."[36] Indeed, the subject matters of the first and second actions for partition, accounting and damages, docketed as Civil Case Nos. A-413 and A-1850, respectively, are the three (3) real properties originally owned by the late Nicolas Magno, which were later declared for taxation purposes under Tax Declaration Nos. 4246, 4249 and 13385. Since all the requisites of *res judicata* under the concept of bar by prior judgment are present, the CA correctly dismissed the amended complaint for partition docketed as Civil Case No. A-1850.

However, while the CA correctly ruled that *res judicata* has already set in, it erred in stating that what Elpidio Magno, *et al.* should have done is to file a writ of execution in the trial court to enforce its final and executory decision in Civil Case No. A-413. It is well settled that a writ of execution must substantially conform to the dispositive portion of the promulgated decision, and cannot vary or go beyond the terms of the judgment; otherwise, it becomes null and void.[37] Here, it is undisputed that both the bodies of the CFI Decision in Civil Case No. A-413 and the CA Decision upholding the CFI, confirmed that the three (3) undivided properties belong to the late Nicolas Magno, but they were not included in the dispositive portions of said decisions as part of the properties that were ordered to be partitioned among his heirs. Thus, it would be pointless to require Elpidio Magno, *et al.* to file a motion for execution, because the trial court will simply deny it for the reason that the only portion of its final decision that becomes the subject of execution, is that ordained in the dispositive portion.

Needless to state, when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the

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[36] *Id.* at 121; Amended Complaint dated July 1, 1992 (Civil Case No. A-1850), p. 5.

[37] *Suyat v. Gonzales-Tesoro*, 513 Phil. 85, 95 (2005).

modification is attempted to be made by the court rendering it or by the highest Court of the land.[38] The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[39] Be that as it may, there are three (3) recognized exceptions to the rule on the immutability of final and executory judgments, namely, (a) the correction of clerical error; (b) the making of so-called *nunc pro tunc* entries which cause no prejudice to any party; and (c) where the judgment is void.[40]

The Court explained the concept of *nunc pro tunc* judgment in this wise:

> The office of a judgment *nunc pro tunc* is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has been actually taken. *It may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken. If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry nunc pro tunc of a proper judgment. Hence a court in entering a judgment nunc pro tunc has no power to construe what the judgment means, but only to enter of record such judgment as had been formerly rendered, but which had not been entered of record as rendered.* In all cases the exercise of the power to enter judgments *nunc pro tunc* presupposes the actual rendition of a judgment, and a mere right to a judgment will not furnish the basis for such an entry. (15 R. C. L., pp. 622-623.)

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[38] *Mocorro, Jr. v. Ramirez*, 582 Phil. 357, 366 (2008).

[39] *Navarro v. Metropolitan Bank & Trust Company*, 612 Phil. 462, 471 (2009).

[40] *Filipinas Palmoil Processing, Inc., et al. v. Dejapa*, 656 Phil. 589, 598 (2011).

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The object of a judgment nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been. (Wilmerding vs. Corbin Banking Co., 28 South., 640, 641; 126 Ala., 268.)

A *nunc pro tunc* entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. *Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake.* (Perkins vs. Haywood, 31 N. E., 670, 672.)

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It is competent for the court to make an entry *nunc pro tunc* after the term at which the transaction occurred, even though the rights of third persons may be affected. But entries *nunc pro tunc* will not be ordered except where this can be done without injustice to either party, *and as a nunc pro tunc order is to supply on the record something which has actually occurred, it cannot supply omitted action by the court* . . . (15 C. J., pp. 972-973.)[41]

Guided by the foregoing principles, the Court finds that the interest of justice would be best served if a *nunc pro tunc* judgment would be entered in Civil Case No. A-413 by ordering the partition and accounting of income and produce of the three (3) properties covered by Tax Declaration Nos. 4246, 4249 and 13385, under the same terms as those indicated in the dispositive portion the CFI Decision dated October 5, 1972. It is undisputed that the said properties are still undivided and considered as part of the estate of Nicolas Magno, pursuant to the final decision in Civil Case No. A-413. There is also no

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[41] *Briones-Vasquez v. Court of Appeals*, 491 Phil. 81, 92-93 (2005). (Italics in the original)

doubt that the CFI failed to include in the dispositive portion of its Decision dated October 5, 1972 in Civil Case No. A-413 its ruling that the said three (3) properties remain undivided and should be partitioned among the heirs of Nicolas Magno. Pertinent portions of the CFI Decision state:

The following facts are undisputed: that **Nicolas Magno, common ancestor of the parties died in 1907**; that he died **intestate, leaving properties one of which is described under Tax Declaration No. 2221**; that Nicolas Magno married twice; that during his first marriage with one Eugenia Recaido, he had two sons, Doroteo Magno and Eduardo Magno but the latter died without issue; that Doroteo Magno died in 1937; that he had four children, namely: Teofilo, Jose, Angela and Esperidion, all surnamed Magno; that of the four, only Teofilo is still living. While Jose was survived by one daughter Lolita and one son, Nicolas Magno. Angela was survived by three children, Isidro, Herminio, and Felicidad, all surnamed Cabatic; Espiridion Magno who is also deceased was survived by his three children Tomas, Elpidio and Aurora, all surnamed Magno. While in his second marriage with Camila Asinger, said Nicolas Magno had three children, Gavino, Nicetas and Nazaria, all surnamed Magno.

The principal issue in this case is whether the properties of the deceased Nicolas Magno have been partitioned.

From the evidence thus adduced, the Court is convinced that said properties of the deceased Nicolas Magno, common ancestor of the parties remain undivided up to present. This view is supported by the testimonies of the plaintiffs and their witnesses, as well as that of the defendants and their witnesses. Custodio Rabina, a witness for the plaintiffs testified that after the death of Nicolas Magno, his son, Doroteo Magno took possession of the twenty-seven hectare Lucap property on condition that he would give three "baars" to the plaintiffs in the form of rentals; that Rabina used to see Doroteo deliver the shares of the plaintiffs; that after the death of Doroteo Magno in 1937, his son Teofilo continued in the possession of the same under the same condition as his father until 1957; that on the said date, Teofilo failed to deliver the shares of the plaintiffs, hence, the latter demanded the return of the land. That in view, thereof, plaintiffs went to Atty. Tomas Rapatalo who advised them to divide the properties in question instead of fighting each other. However, no partition was effected.

Nicolas Magno, another witness for the plaintiffs declared that in 1957, he went to Atty. Rapatalo together with Teofilo Magno, purposely to effect the partition of the properties in question, but no partition was effected due to the refusal of Teofilo's nephews and nieces.

Isidro Cabatic, one of the defendants testified that the properties of Nicolas Magno have not been partitioned and that is the reason why the heirs have no titles in their respective names. He further declared that while they agreed to divide the properties in 1946, nevertheless, since some of them were in Mindanao and others in Quezon City, the partition was not effected, that instead an oral partition was made, but as the witness himself said, it was not approved. Cabatic also declared that subsequently, the heirs from Mindanao came but insisted on the partition according to the Certeza Survey. It is to be noted that in their proposed partition, the heirs hires the services of Surveyor de Asis.

The mere fact that the Lucap property is covered by four tax declarations (Exhibits G, F, E and D) is not evidence to show that it has been partitioned. Mere tax declarations are not evidence of ownership.

Likewise, the fact that the plaintiffs possessed certain portions of the Lucap property does not prove that said property had been partitioned because, as satisfactorily explained by Nicetas Magno, it was the practice of the heirs to occupy portions of the hereditary estate and harvest the corresponding produce thereof. This has not been contradicted or rebutted by the defendants.

The inequality of the areas possessed by the plaintiffs and Doroteo Magno involving the Lucap property which was not explained by the defendants is another irrefutable sign of non-partition. Defendants failed to explain satisfactorily why twenty-seven (27) hectares would belong to Doroteo Magno while the plaintiffs should have only sixteen (16) hectares among themselves from the Lucap property.

Another evidence to show that the properties of Nicolas Magno are still undivided is the testimony of the defendant Teofilo Magno that in 1957, he went to see Atty. Rapatalo for the purpose of asking him to register the properties in Lucap and Kiskis in the name of Doroteo Magno, however, Atty. Rapatalo was not able to file the supposed application for land registration because of the objections of the plaintiffs who were also present when he (Teofilo) approached Atty. Rapatalo. Teofilo also declared that the plaintiffs objected because

they claimed they are co-owners of the same; that due to the same objections of the plaintiffs, Teofilo was not able to get the tax declaration in his name covering the Lucap property.

Defendants claimed and they tried to prove that the properties in litigation are the exclusive properties of Doroteo Magno and therefore, they are entitled to inherit the same to the exclusion of the plaintiffs. This contention of the defendants is untenable. Defendants in the course of the trial, have failed to present any document or writing to show that Nicolas Magno conveyed the properties in question solely to Doroteo.

No partition having been effected among the heirs, it follows that the pro-indiviso character of the lands in question continue. It is a familiar doctrine that when an inheritance is undivided, possession by one of the co-heirs, and prescription, however long may be the lapse, do not run against the latter's right of action to demand the partition of the pro-indiviso property, for the simple reason that the possessor thereof is not a third person, nor does he hold it by such adverse possession as will become legalized by prescription. (Dimagiba vs, Dimagiba, 34 Phil. 357). Such possession is always understood to be exercised by the heir himself and in the name of his co-heirs (Lampitoc vs. Lampitoc, CA-G.R. No. 9200-R, April 30, 1953).

The only exception to the rule that prescription does not run against the co-heirs is when the co-heirs or co-owners, having possession of the hereditary community property, hold the same in his own name, that is, under claim of exclusive ownership. In such case, he may acquire the property by prescription if his possession meets the other requirements of the law (De los Santos vs. Sta. Teresa, 44 Phil. 811). However, this exception does not apply in this case. In the first place, neither the defendant Teofilo Magno nor his father Doroteo Magno could be considered to have possessed the lands in question in the concept of an owner to the exclusion of his co-heirs. The evidence to the effect is insufficient and inconclusive. As can be clearly gleaned from the evidence, the defendants were all the while aware of the plaintiffs' claim of ownership over said properties.

In view of the foregoing, **there is nothing more left for the Court to resolve than to order the partition of the properties in question except the parcel of land described in par. 3, sub-par. (e) of the amended complain**t, otherwise, denominated as Kiskis property, the same having been satisfactorily shown by the defendants to be

the paraphernal property of Monica Romero, wife of Doroteo Magno (Exhibit 6). Clearly therefore, plaintiffs have no right to inherit any portion thereof.

In effecting the partition among the heirs of the decedent, Article 2263 of the New Civil Code should be applied. Under the said provision, rights to an inheritance of a person who dies, with or without a will, before the effectivity of this code, shall be [governed] by the Civil Code of Spain of 1889, by other [previous] laws, and by the Rules of Court. In other words, Nicolas Magno, having died in 1907, the distribution of his estate shall be [governed] by the Civil Code of Spain of 1889.

To properly distribute his estate, the important consideration should be to determine the date of the acquisition of the properties subject of partition in order to be able to [pinpoint] which properties belong to his first marriage and which properties pertain to his second marriage. In this case, however, **evidence is clear that all the properties subject of partition belong to both marriages of the decedent, Nicolas Magno, with the exception of that parcel described in paragraph (3), sub-paragraph (e) of the amended complaint as previously stated.** Therefore, applying Article 931 of the Civil Code of Spain of 1889, the law [in force] at the time of the decedent's death, his children, Doroteo, Gavino, Nicetas and Nazaria should inherit in equal shares. Accordingly, the children of the late Doroteo Magno, namely: Teofilo, Angela, Jose and Espiridion should succeed to the estate of Nicolas Magno by right of representation and pursuant to law, they cannot inherit more than what their father would inherit if alive.

As regards the disposition made by Doroteo Magno during his lifetime, the same are valid to the extent of his share and insofar as the same are not inofficious.

In brief, the properties in question which by agreed preponderance of evidence **were shown to be owned by the decedent, Nicolas Magno, except parcel (e) under par. 3 of the amended complaint as previously mentioned, should be partitioned** as follows: one fourth (1/4) share each child shall be for the three-plaintiffs, and the fourth share shall pertain to the defendant to represent the deceased, Doroteo Magno.[42]

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[42] Records, pp. 185-192, CFI Decision dated October 5, 1972, pp. 28-35. (Emphases added)

In affirming *in toto* the CFI Decision, the CA likewise failed to indicate in the dispositive portion of its Decision dated June 30, 1981 in CA-G.R. No. 52655-R, its definitive ruling that the said three (3) real properties were owned by Nicolas Magno and must be brought into the mass of his estate for partition, thus:

> What are the lands inherited by the parties from the common ancestor, the late Nicolas Magno, and what are the lands, if any, not owned by Nicolas Magno but inherited by the defendants-appellants [Teofilo Magno, *et al*.] from their respective parents, as alleged in their answer? Were some of these lands including those described in the counterclaim, acquired by either party through acquisitive prescription or adverse possession after the required number of years? We decide.
>
> Land subject-matter of defendants' [Teofilo Magno, *et al*.] counterclaim. – As admitted by the defendants in their answer, there existed a property used to be covered by Tax Declaration No. 2221 in the name of Nicolas Magno. In the pre-trial conference of October 8, 1964, the parties stipulated that the land covered by Tax Declaration No. 2221 was one of the properties left by Nicolas Magno (pp. 14-15, 20-21, R.A.). In the stipulation of the parties, dated November 16, 1965, the parties admitted that Tax No. 2221 was revised in 1917 and four tax declarations were issued in lieu of Tax No. 2221 to wit: Tax No. 7819, in the name of Doroteo Magno; Tax No. 7820 in the name of Nicetas Magno; Tax No. 7821 in the name of Gavino Magno, and Tax No. 7822 in the name of Nazaria Magno (see also Exh. A.) In their counterclaim, defendants disclosed that the same land originally declared under Tax No. 2221 are now covered by Tax No. 4246 in the name of Gavino Magno, No. 13385, in the name of Nicetas Magno, and No. 4249, in the name of Nazario Magno (pp. 15-16 Record on Appeal).
>
> **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.**
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> xxx xxx xxx

After a careful analysis of the evidence, We uphold the lower court's findings. We repeat, in 1946, according to defendant Isidro Cabatic, all the heirs have demanded the division of their common

properties; and in 1957 another defendant, Teofilo Magno, disclosed that plaintiffs [Gavino Magno, *et al.*] have asked for partition of the lands in question. There is no evidence to show that between 1946 and 1957, defendants have categorically apprised the plaintiffs of their repudiation of the co-ownership because they have found out that the late Doroteo Magno was the exclusive owner of all the properties by valuable or other considerations from Nicolas Magno and/or they and their predecessors have acquired ownership over the lands in question through adverse possession to the exclusion of plaintiffs and their mother. The complaint for partition was filed on January 23, 1963 or before the lapse of ten (10) years from 1957 when a chance confrontation between Teofilo Magno and plaintiffs took place in the office of Atty. Tomas Rapatalo and when defendants refused to share with the plaintiffs the harvest of the properties.[43]

Concededly, Elpidio Magno, *et al.* failed to raise the issue of *nunc pro tunc* entry at any stage of the proceeding, in order to include the subject three (3) properties among the other real properties of Nicolas Magno subject to partition, pursuant to the CFI's final decision in Civil Case No. A-413. The interest of justice, however, impels the Court to consider and resolve an issue even though not particularly raised, because it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues already found by them.[44] Such omission on the part of Elpidio Magno, *et al.* does not preclude the Court from appreciating the said issue, because to ignore the same would result in a situation where the said three (3) properties would remain under co-ownership, despite the clear intention of the successors-in-interest of Nicolas Magno to partition them among themselves.

Elpidio Magno, *et al*. and Lorenzo Magno, *et al.*, as successors-in-interest of Teofilo Magno, *et al*. and Gavino Magno, *et al.*, respectively, cannot be compelled to remain in the co-ownership,

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[43] *Id.* at 198-201; Court of Appeals Decision dated June 30, 1981 in CA-G.R. No. 52655-R, pp. 5-8. (Emphasis added)

[44] *Trinidad v. Acapulco*, 526 Phil. 154, 163-164 (2006).

pursuant to Article 494[45] of the New Civil Code. There being neither an agreement or condition to keep the three (3) real properties undivided, nor a law prohibiting partition of the said properties, much less a showing that any of the co-owners has acquired them by prescription, each co-owner may demand at any time the partition of the things owned in common, insofar as her share is concerned. No prejudice to any party would be caused by a *nunc pro tunc* entry in this case inasmuch as Article 494 of the same Code explicitly states that no co-owner shall be obliged to remain in the co-ownership, and each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned. Having in mind the concept of a *nunc pro tunc* entry, it bears stressing that the said properties should be subject to partition and accounting of fruits and income, strictly under the same terms as those applied to the other real properties of Nicolas Magno, as stated in the dispositive portion of the CFI Decision in Civil Case No. A-413, namely:

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;

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d) Ordering the defendants to account for the annual income or produce of the above-mentioned properties with the exception of

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[45] Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

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;[46]

On a final note, partition is a right much favored, because it not only secures peace, but also promotes industry and enterprise.[47] The rule of the civil as of the common law that no one should be compelled to hold property in common with another grew out of a purpose to prevent strife and disagreement, to facilitate transmission of titles and avoid the inconvenience of joint holding.[48] The reason of the law in recognizing in favor of a co-owner the right to ask under certain limitations the partition of the property held in common is that the good faith and harmony which the law regards as necessary to exist among co-owners may sometimes be broken by one who, against the wish of others, is opposed to the further continuance of the co-ownership.[49] By reason thereof, the law allows, as a general rule, the pro-indiviso condition to cease and to proceed with the partition of the party, adjudicating as a result thereof to each of the co-owners their respective interest in the community property.[50]

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED** for lack of merit, and the Decision dated July 23, 2012 of the Court of Appeals in CA-G.R. CV No. 90846 is **AFFIRMED.** In the interest of justice, however, the Decision of the Regional Trial Court of Alaminos City, Pangasinan, Branch 54, in Civil Case No. A-1850, is **MODIFIED** in the sense that a *nunc pro tunc* judgment is hereby entered as follows:

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[46] CA *rollo*, pp. 152-153; CFI Decision dated October 5, 1972, pp. 36-37.

[47] The Revised Rules of Court in the Philippines, Special Civil Actions Volume IV-B, Part II, Vicente J. Francisco, 1973, p. 2.

[48] *Id.*, citing 40 Am. Jur. 5.

[49] *Id.* at 5.

[50] *Id.*

a) Declaring petitioners Elpidio Magno, *et al.*[51] and respondents Lorenzo Magno, *et al.*[52] as the respective successors-in-interest of Teofilo Magno, *et al.* and Gavino Magno, *et al.*, who are the legal heirs of Nicolas Magno and, thus, the absolute and exclusive owners of the three (3) real properties covered by Tax Declaration Nos. 4246, 4249 and 13385; and

b) Ordering the said three (3) properties to be subject of partition and accounting of annual income and produce, in accordance with the terms of the dispositive portion of the Decision dated October 5, 1972 of the Court of First Instance of Pangasinan in Civil Case No. A-413.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 207586. August 17, 2016]

AFP RETIREMENT AND SEPARATION BENEFITS SYSTEM (AFPRSBS), *petitioner, vs.* **EDUARDO SANVICTORES,** *respondent.*

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[51] 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.

[52] 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.