THIRD DIVISION

[G.R. No. 183105. July 22, 2009]

ERNA CASALS, AIMEE GRACE CASALS, RUPERT BARRY CASALS, IRENE PAMELA CASALS and APRIL VIDA CASALS, *petitioners, vs.* **TAYUD GOLF AND COUNTRY CLUB, INC., ANTONIO OSMEÑA, PROVINCIAL ASSESSOR OF THE PROVINCE OF CEBU and THE REGISTER OF DEEDS OF THE PROVINCE OF CEBU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INDISPENSABLE PARTY; NATURE AND DEFINITION, REITERATED. — This Court, in the recent case of *Regner v. Logarta, et al.*, thoroughly discussed the nature and definition of an indispensable party, thus: Rule 3, Section 7 of the Rules of Court, defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power. It is precisely "when an indispensable party is not before the court [that] the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. x x x An indispensable party has been defined as follows: An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been

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considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward. A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.

2. ID.; ID.; ID.; A PARTY WHO IS A REGISTERED OWNER OF SOME OF THE PROPERTIES INVOLVED IN A CASE IS AN INDISPENSABLE PARTY. — [T]he CA correctly concluded, based on its findings of fact earlier mentioned, that being the registered owner of at least 27 properties included in the Affidavit of Quitclaim and Waiver, respondent Tayud Golf had a direct interest in the original action. Based on the above premise, the CA correctly ruled that respondent Tayud Golf was an indispensable party to the original action. However, petitioners claim otherwise. Again, they claim that the parcels of land included in the assailed Orders and Writ are distinct and separate from those claimed by respondent Tayud Golf. What the petitioners fail to state, in simple terms, is that the assailed Orders and Writ would not have come into fruition if not for their original complaint, which sought to nullify the Affidavit of Quitclaim and Waiver. As discussed earlier, the properties of respondent Tayud Golf were included in the same Affidavit of Quitclaim and Waiver; hence, its interest in the said properties will surely be affected by the outcome of the case. Again, this Court reiterates that an indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in his absence without injuring or affecting that interest. As such, it is apparent that respondent Tayud Golf is indeed an indispensable party.

3. ID.; COURTS; COURT OF APPEALS; HAS JURISDICTION TO ACT UPON A PETITION FOR ANNULMENT OF

JUDGMENTS OR FINAL ORDERS OF THE REGIONAL TRIAL COURTS. — [P]etitioners are questioning the jurisdiction of the CA in resolving the Petition for Annulment filed by respondent Tayud Golf. The CA acted on the said petition based on its jurisdiction conferred by law, specifically Rule 47 of the Rules of Civil Procedure, x x x By virtue of the above law, the CA had jurisdiction to act upon the Petition for Annulment filed by respondent Tayud Golf. The said petition, sufficient in form and substance, left the CA with no other recourse but to act upon it. The well-settled rule is that the nature of an action/petition is determined by the material allegations it contains, irrespective of whether the petitioner is entitled to the reliefs prayed for therein. A close reading of the petition filed by respondent Tayud Golf distinctly indicates that the grounds relied upon were based on extrinsic fraud and lack of jurisdiction.

4. ID.; ID.; JUDGMENTS; *RES JUDICATA*; REQUISITES, NOT PRESENT. — Under the rule of *res judicata*, also known as "bar by prior judgment," a final judgment or order on the merits, rendered by a Court having jurisdiction over the subject matter and of the parties, is conclusive in a subsequent case between the same 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. The requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the court rendering the same must have jurisdiction over the subject matter and the parties; and (4) there must be, between the two cases, identity of parties, identity of subject matter, and identity of causes of action. The principle of *res judicata* is not applicable to the questioned decision of the CA, as it lacks some essential elements. *Apollo* was dismissed by the CA not on its merits but on technicality.

APPEARANCES OF COUNSEL

Muntuerto Miel Duyongco Law Offices for petitioners.

Dennis R. Gascon for Antonio Osmeña.

Palma Ybañes & Teleron Law Offices for Tayud Golf and Country Club, Inc.

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D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review[1] on *Certiorari* under Rule 45 which seeks to reverse and set aside the Decision[2] dated February 13, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 02601.

The factual and procedural antecedents are the following:

After Robert Casals' death on December 12, 1988, his heirs, herein petitioners, namely, his widow, Erna A. Casals, his children, Aimee Grace, Rupert Barry, Irene Pamela and April Vida tried to locate all the properties of the deceased for the settlement of the estate and partition of properties. In their search for the said properties, they approached respondent Antonio Osmeña who at first, denied having copies of any deed of sale, tax declarations or other documents relative to any properties owned and acquired by the decedent. However, on June 14, 2001, respondent Osmeña testified under oath and in the presence of petitioners Erna Casals, Rupert Barry Casals and Aimee Grace Casals that he became the sole owner of all parcels of land that the late Casals jointly owned with him and Inocentes Ouano, by virtue of an Affidavit of Waiver and Quitclaim[3] dated March 20, 1987, that the deceased and Ouano executed in Osmeña's favor. As a result of that, petitioners went to the Provincial Assessor and the Register of Deeds of the Province of Cebu to verify the claim of respondent Osmeña. They found out that respondent Osmeña was indeed trying to transfer ownership of the said land co-owned by the same respondent, the late Casals and Ouano through the use of the Affidavit of Quitclaim and Waiver.[4]

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[1] *Rollo*, pp. 11-55.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 61-87.

[3] *Rollo*, pp. 405-410.

[4] Complaint dated August 12, 2001; *rollo*, pp. 388-389.

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The Affidavit states, in part:

That WE, Inocentes M. Ouano and Robert C. Casals, both of legal ages, Filipinos, both married and residing at Banilad, Cebu City and Casals Village, Mabolo, Cebu City, respectively, after having been duly sworn in accordance with law hereby depose and say:

1. That we were the organizers, including Antonio V. Osmeña, of Apollo Homes and Investment Corporation, a registered corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines;

2. That we were the vendees of the following lots, areas and their corresponding Tax Declarations, T.C.T. and O.C.T. situated at Tayud, Lilo-an project, on golf site with the total areas of 346,593.50 square meters, more or less, subdivision area in Tayud, Lilo-an, with the total area of 636,726 square meters, more or less, including the subdivision area of Tayud, Consolacion, Cebu, with the total area of 48,488 square meters, more or less, and all other real properties belonging to the aforesaid corporation as to wit:

x x x x x x x x x

3. That WE hereby CONVEY, WAIVE, FORGO, all our rights, interests and participation of the herein above-described properties in favor of our co-organizer, ANTONIO V. OSMEÑA, likewise of legal age, married, Filipino and resident of Cebu City, Philippines;

4. That WE hereby quit and waive our ownership of the above-mentioned parcels of land in favor of the said ANTONIO V. OSMEÑA and hereby quit and waive all causes of action regarding said parcels of land in favor of ANTONIO V. OSMEÑA and assigns from this date as originally arranged and agreed.

The above-mentioned affidavit was allegedly used by respondent Osmeña to transfer ownership of certain parcels of land to his name and, as a consequence, tax declarations were issued. Out of those properties covered by the waiver and quitclaim, four (4) parcels, namely, Lots 881, 627, 628 and 638, were developed by respondent Osmeña as a memorial park; six (6) parcels, which were consolidated and denominated as Lots 1051 and 954, were sold to Tri-Plus Holdings Corporation and Euclid Po as payor; and one (1) parcel, Lot 1340, was sold to the spouses Warlito and Carolina de Jesus.[5]

[5] CA Decision dated February 13, 2008, *rollo*, p. 64.

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On August 17, 2001, herein petitioners filed a case for declaration of nullity, conveyance, quieting of title, recovery of ownership, accounting and damages against Antonio V. Osmeña, Euclid Po, Tri-Plus Holdings Corporation, Spouses Warlito and Carolina de Jesus, and the Provincial Assessor of Cebu before Branch 56 of the Regional Trial Court (RTC) of Mandaue City, docketed as Civil Case No. MAN-4150.[6]

Petitioners enumerated the following in their prayer:

WHEREFORE, it is most respectfully prayed that:

1. Before trial, an Order be made appointing a Receiver to take possession of the properties subject matter of this case during the pendency of this action, upon filing of an obligation by plaintiffs in such sum as this court may deem sufficient;

1.1. Order the Receiver to make an accounting of all the fruits or proceeds of the parcels of land under litigation for the protection of the Plaintiffs;

2. And after trial, Judgment be made against the Defendants and in favor of the Plaintiffs:

2.1. ON THE FIRST CAUSE OF ACTION:

2.1.1. Declaring the Affidavit of Quitclaim and Waiver as null and void and without any legal effect to convey title;

2.2. ON THE SECOND CAUSE OF ACTION:

2.2.1. Declaring the Plaintiffs as owners to the extent of one-half of the following seventy-three (73) parcels of land: Lots Nos. 1110; 928; 628; 638; 812; 700; 854; 634; 635; 636; 637; 715; 308; 1040; 869; 870; 969; 909; 311; 1072; 1032; 893; 1019; 979; 1096; 957; 974; 1015; 1011; 1070; 866; 1128; 981; 825; 1118; 1111; 1033; 629; 706; 315; 838; 310-A; 841; 887; 1087; 1014; 811; 313; 1005; 1021; 1079; 1119; 1084; 1120; 989; 1041; 1034; 975; 1003; 1038; 1039; 954; 1078; 1076; 1135; 1125; 985; and 901, and such other lands that may be discovered later, including all the fruits and improvements found thereon;

2.2.2. Cancelling all the Tax Declarations of the subject parcels of land issued under the name of Defendant Osmeña and Ordering

[6] *Id.* at 62.

the defendant Assessor to do the cancellation and the issuance of the new tax declarations to reflect Plaintiff's ownership of one-half portion;

2.2.3. Removing the cloud of doubt on the title and ownership of the Plaintiffs of the subject parcels of land;

2.3. ON THE THIRD CAUSE OF ACTION:

2.3.1. Declaring the Plaintiffs as owners to the extent of one-third of the following forty two (42) parcels of land: Lot Nos. 671; 632; 1075; 1043; 1044; 1134; 1136; 972; 947; 802; 310; 1071; 809; 568; 987; 1093; 1026; 1006; 1047; 1018; 1102; 990; 988; 946; 1094; 1138; 1012; 1127; 1028; 306; 805; 1101; 1099; 1103; 1121; 1122; 987; 1093; 1113; 1077; 1357 and 867, and such other parcels of land that may be discovered later, including all the fruits and improvements found thereon;

2.3.2. Cancelling all the Tax Declarations of the subject parcels of land issued under the name of Defendant Osmeña and Ordering the defendant Assessor to do the cancellation and the issuance of the new tax declarations to reflect Plaintiff's ownership of one-third portion;

2.3.3. Removing the cloud of doubt on the title and ownership of the Plaintiffs of the subject parcels of land;

2.6. ON THE FOURTH CAUSE OF ACTION:

2.6.1. Annulling the Deed of Sale in favor of Defendant Po and Tri-Plus to the extent of one-half of Lot Nos. 1051 and 954 which rightfully belongs to the plaintiffs;

2.6.2. Granting the Plaintiffs the right to redeem the other half of Lot Nos. 1051 and 954, representing the share of defendant Osmeña;

2.7. ON THE FIFTH CAUSE OF ACTION:

2.7.1. Declaring Plaintiffs as owners of one-half portion of Lot Nos. 811; 627 and 628;

2.7.2. Declaring Defendant Osmeña to have acted in bad faith claiming total ownership by virtue of [the] sale of Lot Nos. 811; 627 and 628 and in fraudulently depriving Plaintiffs of their rights of ownership of the land [and] the fruits thereof;

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2.7.3. Ordering the accounting of the proceeds of the sale or fruits of lot nos. 811; 627 and 628 subject of the development into a memorial plot known as Calero Memorial Estates and to order Defendant Osmeña to deliver to the Plaintiffs all the fruits and proceeds of Lot Nos. 811, 627 and 628, with legal interest computed from the time it was appropriated by defendant Osmeña up to the time the fruits or proceeds are delivered to the Plaintiffs;

2.7.4. Removing the cloud of doubt of the Plaintiff's title of Lot Nos. 811, 627 and 628;

2.8. ON THE SIXTH CAUSE OF ACTION:

2.8.1. Annulling the Deed of Sale in favor of Defendant DE JESUS to the extent of one-half of Lot No. 1340;

2.8.2. Granting the Plaintiffs the right to redeem the other half of Lot No. 1340, by way of pre-emption from Defendants DE JESUS;

2.9. ON THE SEVENTH CAUSE OF ACTION:

2.9.1 Removing the cloud of doubt on the Plaintiff's title over Lot Nos. 1057, 1200 and 627 by declaring the Affidavit of Quitclaim and Waiver as null and void and without any legal effect to transfer or convey title to defendant Osmeña;

3. ON THE [EIGHTH] CAUSE OF ACTION:

3.1 Ordering the Defendant Osmeña to pay Plaintiffs actual damages representing the fruits of the land, as well as the value of the land that had been illegally disposed of, at such amount as this Honorable Court may determine on the basis of the accounting or the report of the receiver;

4. ON THE NINTH CAUSE OF ACTION:

4.1 Ordering the Defendant Osmeña to pay Plaintiff, the sum of TWO MILLION PESOS as moral damages;

5. ON THE TENTH CAUSE OF ACTION:

5.1. Ordering the Defendant Osmeña to pay Plaintiffs the sum of ONE MILLION PESOS as exemplary damages;

6. ON THE ELEVENTH CAUSE OF ACTION:

6.1 Ordering the Defendant Osmeña to pay Plaintiffs attorney's fees in such sum as this Honorable Court may fix or in an amount not less than ₱500,000.00;

Plaintiffs pray for other reliefs and remedies consistent with law and equity.[7]

On June 24, 2002, the RTC approved in its Order,[8] a compromise agreement entered into by petitioners and respondent Osmeña, the pertinent portions of which read:

It was agreed, after discussion of the issues and matters involved as follows:

1. That the area involved in this case is One Hundred (100) hectares, more or less. Of this area, Thirty-Four (34) hectares have been designated as Tayud Golf and Country Club. It was recognized by the Plaintiff that Erna Casals is entitled to one-third (1/3) or one-half (½) of the area involved depending on the Absolute Deed of Sale, considering that her participation is limited only to where Robert Casal's participation clearly shows. The parties have agreed to set aside the determination of the actual participation and/or ownership, until after an inventory shall have been conducted. Of the balance, Twenty-Eight (28) hectares have been involved and/or alloted to the Calero Memorial Estate Park. Of this, Plaintiff Erna Casals is entitled to One-Third (1/3) more or less of the area, or nine point three (9.3) hectares more or less from this area, from which is to be deducted what has been used as road right of way, kiosk and other similar allocations.

Of the balance of Thirty-Eight (38) hectares, Plaintiff Erna Casals, is again entitled to one-third (1/3) or twelve point, six more or less, which will be turned over by the Defendant Osmeña after inventory to Erna Casals.

Considering that most, if not all, of the properties involved in the Calero Memorial Park, have already been converted into Certificate of Ownership, Defendant will turn over to the Plaintiff such number of certificate of ownership equal to the area she is entitled to.

For the purpose of clarifying the matter involved, Joseph Pilas, in conference with the counsels, and such other people as maybe necessary will conduct an inventory of the entire one hundred (100) hectares, more or less.

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[7] Complaint dated August 12, 2001, *rollo*, pp. 396-399.

[8] *Rollo*, pp. 277-278.

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This Agreement, which for the moment serves as preliminary amicable settlement of this case, is signed by the parties and counsels before this Court, this 24th day of June, 2002. (See separate yellow pad sheet indicating the signatures of the parties and counsels)

It was agreed that once a final compromise agreement has already been made, then the parties will execute Affidavit of Desistance and/or withdraw any or all cases already filed against each other, and that said final amicable settlement will preclude any further litigation between the parties on the lots involved.

Parties have also agreed that, in instances where it becomes necessary, they will jointly take legal steps to recover the property which have to be resolved from third parties.

Inventory is to be completed on or before July 19, 2002.

Petitioners, on November 19, 2002, filed a Motion for Separate Partial Judgment[9] stating that the One Hundred Seventy-Six (176) parcels of land mentioned in the same motion, together with the fruits and improvements thereon could already be awarded to the parties under the terms of the settlement agreement spelled out in the trial court's Order dated June 24, 2002. They further prayed that they be declared owners of one-half (½) share of one hundred (100) parcels of land, which were acquired by the late Casals and respondent Osmeña as shown in their respective deeds of sale; and one-third (1/3) share of seventy-six (76) parcels of land acquired by the late Casals, respondent Osmeña and Ouano, as also shown in their respective deeds of sale.

The RTC, in its Order[10] dated December 9, 2002, granted the above-mentioned motion, stating that:

The Court finds the Motion for Separate Partial Judgment meritorious and so, accordingly, GRANTS the same as prayed for with the modification that Lot Nos. 1051, 954 and 1340 are not included in this Order.

Accordingly, the [Register] of Deeds of the Province of Cebu is hereby ordered to immediately implement this Order in accordance with the Motion.

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[9] *Id.* at 844-867.

[10] *Id.* at 383.

SO ORDERED.

Thereafter, on March 17, 2003, petitioners filed a Motion for Execution[11] with the RTC, which granted it in an Order[12] dated March 21, 2003, thus:

> Per Order dated December 9, 2002, the Court issued an Order granting the Motion for Separate Partial Judgment. Finding the same meritorious, with qualification that Lot Nos. 1051, 954 and 1340 be not included in that Order.
>
> The parties in this case, through counsel, were duly furnished copies of the aforesaid Order particularly counsel for the Defendants Atty. Nilo Balorio on February 19, 2003. Atty. Francis Zosa also appeared and received a copy of the Order per returned (sic) dated February 5, 2003.
>
> Despite receipt of the aforementioned Order, no Motion for Reconsideration, or any other pleading, had been filed by the Defendant. Neither has the Order been brought up on appeal or other appellate procedure, despite the lapse of time from receipt of the Order by counsels, with said Order not being questioned or otherwise sought to be amended, in any manner, whatsoever. The said judgment or Order has, therefore, become final.
>
> Accordingly, the Motion for Execution being meritorious, is granted. Let execution issue on the Order of December 9, 2002.
>
> Atty. Anastacio Muntuerto, Jr. is notified in open court.
>
> Notify Attys. Francis Zosa, Nilo Balorio and Climaco Camiso, Jr.
>
> SO ORDERED.

Consequently, a Writ of Partial Execution[13] was issued on April 3, 2003, which was later implemented by the Office of the Provincial Assessor of Cebu and the Register of Deeds of the Province of Cebu.

As stated by petitioners in the present petition, before the writ of partial execution was issued, Apollo Homes and Investment

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[11] *Id.* at 868-873.

[12] *Id.* at 384.

[13] *Id.* at 385-386.

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Corporation, on March 20, 2003, filed a Motion for Intervention, which was denied by the RTC on July 4, 2003, as well as the subsequent motion for reconsideration. Thereafter, Apollo Homes filed its Motion for Leave to File Reinstatement of Intervention, which the RTC granted in its Order dated December 27, 2006.[14]

On December 6, 2005, Apollo Homes and Investment Corporation filed with the CA a Petition for Annulment[15] of the RTC Orders dated June 24, 2002, December 9, 2002, and March 21, 2003, the Writ of Partial Execution dated April 3, 2003, and all tax declarations issued pursuant thereto, which was subsequently dismissed[16] by the CA on January 26, 2006. Thereafter, an Entry of Judgment[17] was issued.

Petitioners and respondent Osmeña entered into a Final Compromise Agreement[18] in September 2006. Afterwards, petitioners filed with the RTC a Motion for Judgment Based on the Compromise Agreements[19] dated October 4, 2006, attaching thereto the compromise agreements entered into by petitioners, respondent Osmeña and the Spouses De Jesus, the resolution of which is still pending.

Due to the above circumstances, respondent Tayud Golf filed with the CA a Petition for Annulment of Final Orders[20] dated March 23, 2007, seeking to nullify the Order dated December 9, 2002 granting the Motion for Separate Judgment, the Order dated March 21, 2003 granting the Motion for Execution of Partial Judgment and the Writ of Partial Execution dated April 3, 2003, on the grounds that the said Orders and Writ were obtained through extrinsic fraud and that there was lack of jurisdiction over the person of respondent Tayud Golf, which was never impleaded as a defendant in the civil case.

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[14] *Id.* at 22-23.

[15] *Id.* at 336-342.

[16] *Id.* at 345-346.

[17] *Id.* at 349.

[18] *Id.* at 1019.

[19] *Id.* at 1030.

[20] *Id.* at 358-381.

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In its Decision[21] dated February 13, 2008, the CA found the petition of respondent Tayud Golf meritorious, the dispositive portion of which reads:

> WHEREFORE, the instant petition is GRANTED. The following orders and writ issued by Branch 56 of the Regional Trial Court, Mandaue City, in Civil Case No. MAN-4150 are ALL declared NULL and VOID for lack of jurisdiction:
>
> 1. Order dated December 9, 2002, granting the Motion for Separate Partial Judgment;
>
> 2. Order dated March 21, 2003, granting the Motion for Execution of the partial judgment; and
>
> 3. Writ of Partial Execution dated April 3, 2003.
>
> The Provincial Assessor of the Province of Cebu is hereby ordered to cancel the tax declarations it issued pursuant to the Writ of Partial Execution dated April 3, 2006 and to reinstate the tax declarations canceled pursuant to said writ.
>
> Let the case be REMANDED for further proceedings to Branch 56 of the Regional Trial Court, Mandaue City, and the latter to issue an order to implead as party-defendant Tayud Golf and Country Club, Inc. being an indispensable party to the case.
>
> SO ORDERED.

Subsequently, a Motion for Reconsideration was filed by herein petitioners, but was denied by the CA in its Resolution[22] dated May 29, 2008.

Hence, the present petition by petitioners Casals.

Petitioners list the following grounds for the allowance of their petition:

> I. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN ITS FACTUAL FINDING, WHICH IS CONTRARY TO THE EVIDENCE AND/OR COMMITTED MISAPPREHENSION OF FACT WHEN IT FOUND THAT MERE INCLUSION OF THE ONE HUNDRED EIGHT (108) PARCELS OF LAND THAT RESPONDENT

[21] *Supra* note 2.

[22] *Rollo,* pp. 90-92.

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TAYUD GOLF CLAIMED UNDER THE DEED OF ASSIGNMENT IN THE AFFIDAVIT OF QUITCLAIM AND WAIVER RENDERS THE TRIAL COURT WITHOUT ANY JURISDICTION TO ISSUE THE ASSAILED ORDERS.

II. THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE DECLARING RESPONDENT TAYUD GOLF AS AN INDISPENSABLE PARTY WHICH IS NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

III. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO THE PETITION WHICH DID NOT ASSAIL THE ORDER DATED JUNE 24, 2002 UPON WHICH THE ASSAILED ORDERS DATED 9 DECEMBER 2000; 21 MARCH 2003 AND THE WRIT OF EXECUTION WERE ALL BASED, AS TO CALL AN EXERCISE OF SUPERVISION FROM THIS HONORABLE COURT.

IV. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT GAVE DUE COURSE TO THE PETITION WHICH VIOLATED RULE 47 OF THE RULES OF COURT, THE SAME HAVING BEEN FILED WITHOUT IMPLEADING EUCLID PO, TRI-PLUS HOLDINGS, SPOUSES WARLITO AND CAROLINA DE JESUS, THE OTHER DEFENDANTS IN CIVIL COMPLAINT (MAN 4150) WHO ARE INDISPENSABLE PARTIES TO THE PETITION FOR ANNULMENT.

V. THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT IN DECLARING THE REGIONAL TRIAL COURT, MANDAUE CITY AS WITHOUT JURISDICTION TO ISSUE THE ORDER DATED DECEMBER 9, 2002; THE ORDER DATED MARCH 21, 2003 AND THE WRIT OF PARTIAL EXECUTION DATED APRIL 3, 2003;

VI. THE COURT OF APPEALS ERRED IN DECLARING THE ORDER DATED 9 DECEMBER 2002, THE ORDER DATED 21 MARCH 2003 AND THE WRIT OF PARTIAL EXECUTION AS NULL AND VOID IN ITS ENTIRETY WHEN SEVEN (7) PARCELS OF LAND, OUT OF THE ONE HUNDRED EIGHT (108) PARCELS OF LAND CLAIMED BY RESPONDENT TAYUD GOLF UNDER THE

DEED OF ASSIGNMENT ARE DISTINCT, DIVISIBLE AND SEPARABLE FROM THE ONE HUNDRED TWENTY-TWO (122) PARCELS OF LAND SUBJECT OF THE COMPLAINT OR FROM THE ONE HUNDRED SEVENTY-SIX (176) PARCELS OF LAND SUBJECT OF RESPONDENT OSMEÑA'S INVENTORY AND PETITIONER'S MOTION FOR SEPARATE JUDGMENT.

VII. THE COURT OF APPEALS FAILED TO TAKE JUDICIAL NOTICE OF ITS PRIOR FINAL RESOLUTION IN THE CASE ENTITLED "*APOLLO HOMES INVESTMENT CORPORATION, ET AL. V. ERNA CASALS, ET AL.*, CA.-G.R. NO. 1286, WHICH BARRED THE RESPONDENT OSMEÑA, APOLLO HOMES AND INOCENTES OUANO FROM ANNULING AND CANCELLING THE TAX DECLARATIONS ALREADY ISSUED UNDER THE JOINT NAMES OF RESPONDENT OSMEÑA AND CASALS; THE ORDER DATED JUNE 24, 2002 AND ALL THE ORDERS ASSAILED BY THE RESPONDENT TAYUD GOLF AND THIS FINAL RESOLUTION CANNOT BE CIRCUMVENTED OR COLLATERALLY ATTACKED BY THE QUESTIONED DECISION OF THE COURT OF APPEALS, WHICH ORDERED THE CANCELLATION OF THE SAME TAX DECLARATIONS.[23]

According to petitioners, in respondent Tayud Golf's petition for annulment of the final orders, it was stated that petitioners were adjudged to be co-owners of, among others, one hundred eight (108) parcels of land, which were actually owned by respondent Tayud Golf; however, the Order dated 9 December 2002 did not adjudge petitioners as the co-owners of the said parcel of lands. They added that, out of the one hundred seventy-six (176) parcels of land prayed for in the motion for separate partial judgment, only seven were included in the motion; and, out of the one hundred seventy-three (173) parcels of land granted by the RTC, only six (6) were claimed by respondent Tayud Golf and not one of the tax declarations of the said six parcels of land was canceled and transferred to the joint names of Osmeña and petitioners by reason of the implementation of the writ of execution. Such facts, as argued by petitioners, were misapprehended by the CA when it ruled that respondent Tayud Golf was an indispensable party to the complaint.

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[23] *Id.* at 27-28.

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Petitioners also posit that the CA's conclusion that respondent Tayud Golf was an indispensable party is contrary to law[24] and jurisprudence.[25] According to them, by the very definition of a real party-in-interest, respondent Tayud Golf cannot qualify as such due to the following reasons:

1. Respondent Tayud Golf has neither any claim in the parcels of land subject of the petitioner's deeds of sale, tax declarations and titles which are ADVERSE to that of the petitioners, nor has the respondent performed any act or omission that violates the legal right of the petitioners with respect to the petitioners' land in litigation.

2. Respondent Tayud Golf is not also necessary to a complete determination or settlement of the questions involved in the petitioner's complaint.

3. Tayud Golf's claim of ownership of the 108 parcels of land (by virtue of the Deed of Assignment executed by Apollo Homes) is not affected by having the Affidavit of Waiver and Quitclaim annulled.

4. The interest of respondent Tayud Golf in the one hundred eight (108) parcels of land is distinct, divisible and separate from the one hundred twenty two (122) parcels of land involved in the litigation between the petitioners and respondent Osmeña and co-defendants Euclid Po, Tri-Plus Holdings, Inc. and Spouses Warlito and Carolina de Jesus.

5. No damage or prejudice is caused to respondent Tayud Golf as a result of the implementation of the assailed Orders.

Petitioners further argue that the failure of respondent Tayud Golf to include the other defendants namely: Euclid Po, Tri-Plus Holdings, Inc. and the Spouses De Jesus as party-respondents in the petition for annulment renders respondent Tayud Golf's petition fatally defective and the assailed Decision of the CA null and void.

Petitioners also claim that the assailed Orders and Writ of Execution was not inimical; nor did it have any adverse effect

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[24] Rules of Court, Rule 3, Sec. 2.

[25] Petitioners cited the following cases: *Imelda Relucio v. Angelina Mejia Lopez*, 373 SCRA 584 (2002) and *Gan Hock v. CA*, 197 SCRA 231 (1991).

on the claim of ownership of respondent Tayud Golf. They cite *Republic v. Sandiganbayan*,[26] wherein this Court ruled that the failure to join an indispensable party does not divest the court of jurisdiction, since the rule regarding indispensable parties is founded on equitable considerations and is not jurisdictional and, thus, the court is not divested of its power to render a decision even in the absence of indispensable parties, though such judgment is not binding on the non-joined party.

Petitioners also point out that the CA ignored the separability and divisibility of the 6 lots from the 112 parcels of land that were transferred under the joint names of petitioners and respondent Osmeña, pursuant to the Order dated June 24, 2002 and the questioned Orders implementing it, when it decided to declare the assailed Orders as null and void in their entirety and ordered the Provincial Assessor to cancel the tax declarations pursuant to the Writ of Partial Execution dated April 3, 2006, and to reinstate the previous tax declarations under the sole name of respondent Antonio Osmeña.

Petitioners reasoned that the CA should have taken judicial notice of its Resolution dismissing the petition filed by Apollo Homes, Antonio Osmeña and Inocentes Ouano for the nullification of the Order dated June 24, 2002, including the assailed Orders implementing it, as well as the tax declarations that were issued pursuant to the writ of partial execution. As such, the Decision of the CA circumvented or collaterally attacked the validity of the final resolution against respondent Osmeña. In the same manner, petitioners argue that the CA failed to take judicial notice of the fact that Apollo Homes has judicially admitted co-ownership of the 112 parcels of land under the Deed of Assignment that it executed with respondent Osmeña and Inocentes Ouano on November 18, 2004.

Finally, the grounds for petitioners' application for a temporary restraining order and preliminary injunction are the following:

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[26] G.R. No. 152154, July 15, 2003, 406 SCRA 193, 269.

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1. The petitioners have clear legal rights as co-owners of the 112 parcels of land under the tax declarations that were already issued under the joint names of co-respondent Osmeña and Heirs of Casals;

2. The questioned Decision directing the respondent Provincial Assessor to cancel the aforesaid tax declarations violate the petitioners' clear and legal rights of co-ownership over the 112 parcels of land;

3. Unless this Honorable Court issues the temporary restraining order, the respondent Provincial Assessor will carry out the questioned decision of the Court of Appeals and cancel the 112 tax declarations to the prejudice of the petitioners. Besides, the implementation of this Order will render futile whatever decision this Honorable Court will render in this case.

4. The petitioners are willing to put up a bond in an amount that this Honorable Court may fix to answer whatever damage that may be caused to the respondents should they be adjudged as not entitled to the injunctive relief.

Respondent Antonio Osmeña, in his Comment[27] dated September 19, 2008, argues that petitioners should not have raised questions of fact in the present petition, because under Section 1, Rule 5 of the Rules of Court, in petitions for review on *certiorari*, only questions of law shall be raised and be distinctly set forth. According to the respondent, the first three grounds raised by petitioners are questions of fact and must be stricken down. Respondent Osmeña adds that the CA correctly ruled that respondent Tayud Golf was an indispensable party because, based on the Order dated June 4, 2002, the interest of Tayud Golf in Civil Case No. MAN-4150 was not limited to only 6 parcels of land partially awarded in favor of petitioners as co-owned by them, but also include all the 108 parcels of land mentioned as Golf Course in said Order. As to the contention of petitioners that the CA had no jurisdiction to pass upon the validity of the Order dated June 24, 2002, of the trial court for failure of respondent Tayud Golf to assail the same, respondent Osmeña counters that the jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred

[27] *Rollo*, pp. 1237-1249.

by consent or agreement of the parties, and that an action for annulment of judgment or final order is within the jurisdiction of the CA pursuant to Section 47 of the 1997 Rules of Civil Procedure. Anent the contention of petitioners that respondent Tayud Golf violated Rule 47 for filing a petition — but without impleading Euclid Po, Tri-Plus Holdings, Inc., and spouses Warlito and Carolina de Jesus, who are indispensable parties to the petition for annulment — respondent Osmeña disputes such argument by stating that there was no necessity to include Euclid Po, Tri-Plus Holdings, Inc., and the Spouses De Jesus in the petition for annulment before the CA, as no unwarranted injury can befall them with their exclusion. It is further argued by respondent Osmeña that there is nothing in the records that would warrant a departure from the established general principle that the non-joinder of an indispensable party is a ground for annulment of judgment or final order under Rule 47 of the 1997 Rules of Civil Procedure. In the case[28] cited by petitioners, the one who raised the issue of non-joinder of indispensable parties was not the non-joined party, but Imelda Marcos, who was already a party to the case; hence, according to respondent Osmeña, the same case is not applicable to the present case. Lastly, respondent Osmeña posits that the principle of *res judicata* cannot be applied to the present case, because the elements of the same principle is not present.

Respondent Tayud Golf, in its Comment[29] dated September 29, 2008, contends that the petition filed by petitioners before this Court is fatally defective because of the latter's failure to comply with the requirements of the Rules relative to the filing of the said petition. The said defects are: there is an absence of authority to sign the Verification and Certification of Non-Forum Shopping, and the petition is not accompanied by a valid Affidavit of Service. Respondent Tayud Golf also claims that the special powers of attorney attached to the instant petition were both executed six years ago and that the authority granted therein primarily referred to the sale of properties, acts and

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[28] *Supra* note 26.

[29] *Rollo*, pp. 1251-1264.

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transactions related thereto. Aside from the said defects, respondent Tayud Golf also argues that the petition raises questions of fact and not pure questions of law, as required under Rule 45 of the Rules of Court. According to respondent Tayud Golf, the first ground stated by petitioners is misleading, because the actionable document that they assail in their complaint before the trial court, the Affidavit of Quitclaim and Waiver purportedly executed by petitioners and Ouano in favor of respondent Osmeña, includes 106 of respondent Tayud Golf's lot; hence, the very complaint filed by petitioners already put into issue the ownership of the subject lots owned by respondent Tayud Golf, yet, petitioners did not implead respondent Tayud Golf as a party to the civil case. As an answer to the second argument, respondent Tayud Golf once again raises the issue that petitioners' argument is actually a question of fact. Respondent Tayud Golf further argues that petitioners' third argument is again misleading, as respondent Tayud Golf was not and has never been a party to the civil case; therefore, it is not bound by the Order dated June 24, 2002, which was the result of the agreements between petitioners and respondent Osmeña. As to the fourth argument of the petitioners, respondent Tayud Golf states that Euclid Po, Tri-Plus Holdings and the Spouses De Jesus do not have any interest in the final orders, as required for them to be considered indispensable parties insofar as the instant petition is concerned. Anent the fifth ground raised by petitioners, respondent Tayud Golf claims that petitioners' reliance on *Republic v. Sandiganbayan* is misleading, because the same case is inapplicable to the instant case. Finally, as to the sixth ground, respondent Tayud Golf opines that, if indeed petitioners were acting in good faith, they could have simply excluded respondent Tayud Golf's lots from the civil case.

Petitioners, in their Consolidated Reply[30] dated December 19, 2008, argue that per their compliance dated July 26, 2008, they have already cured whatever defects their petitions had by submitting affidavits of service of the motion for extension of time to file petition for review on *certiorari*, and the petition itself with properly

[30] *Id.* at 1289-1316.

accomplished jurats. As to the argument of respondent Tayud Golf that the special powers of attorney executed by petitioners April Vida Casals and Irene Casals Madarang are defective on the ground that they were executed six years ago and that the authority granted to petitioners' mother, Erna Casals, refers only to the sale of properties and acts and transactions related thereto, petitioners dismiss it as without any factual and legal basis. They contend that because the authority granted to petitioner Erna Casals did not only refer to the sale of the properties, but also to the filing of legal action/s for recovery of all properties on which they have interests as heirs of Robert Casals, including the authority to represent them during the pre-trial conference; to enter into a compromise or stipulation of facts, to sign all pleadings and certifications of non-forum shopping, and such other documents as may be necessary and proper to effect such authority. Petitioners also add that the Answer filed by petitioner Erna Casals, for and on behalf of co-petitioners April Vida Casals and Irene Pamela Casals, to respondent Tayud Golf's petition for annulment was authorized by the same special powers of attorney, which were not contested by respondent Tayud Golf — the petitioner in the original petition. Finally, petitioners reiterate the grounds they raised in the instant petition.

The present petition is unmeritorious.

As clearly deduced from the errors assigned by the petitioners, the core issue is whether or not respondent Tayud Golf is an indispensable party to the original action. All the other errors imputed are borne out of the CA's conclusion.

This Court, in the recent case of *Regner v. Logarta, et al.*,[31] thoroughly discussed the nature and definition of an indispensable party, thus:

> Rule 3, Section 7 of the Rules of Court, defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible,

[31] G. R. No. 168747, October 19, 2007, 537 SCRA 289-292.

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and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power.[32] It is precisely "when an indispensable party is not before the court [that] the action should be dismissed."[33] The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[34]

As we ruled in *Alberto v. Mananghala*:[35]

> In an action for recovery of property against a person who purchased it from another who, in turn, acquired it from others by the same means or by donation or otherwise, the predecessors of defendants are indispensable parties if the transfers, if not voided, may bind plaintiff. (*Garcia vs. Reyes*, 17 Phil. 127.) In the latter case, this Court held:
>
> In order to bring this suit duly to a close, it is imperative to determine the only question raised in connection with the pending appeal, to wit, whether all the persons who intervened in the matter of the transfers and donation herein referred to, are or are not necessary parties to this suit, since it is asked in the complaint that the said transfers and donation be declared null and void – an indispensable declaration for the purpose, in a proper case, of concluding the plaintiff to be the sole owner of the house in dispute.
>
> If such a declaration of annulment can directly affect the persons who made and who were concerned in the said transfers, nothing could be more proper and just than to hear them in the litigation, as parties interested in maintaining the validity of those transactions, and therefore, whatever be the nature of the judgment rendered, Francisco Reyes, Dolores Carvajal, Alfredo Chicote, Vicente Miranda, and Rafael Sierra, besides the said minors, must be included in the case as defendants. (*Garcia vs. Reyes*, 17 Phil., 130-131.)

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[32] *Borlasa v. Polistico*, 47 Phil. 345, 347 (1925).

[33] *People v. Hon. Rodriguez*, 106 Phil. 325, 327 (1959).

[34] *Alabang Development Corporation v. Valenzuela*, 201 Phil. 727, 742 (1982); *Director of Lands v. Court of Appeals*, 181 Phil. 432, 440 (1979); *Lim Tanhu v. Ramolete*, G.R. No. L-40098, August 29, 1975, 66 SCRA 425, 448.

[35] 89 Phil. 188, 191-192 (1951).

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An indispensable party has been defined as follows:

> An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.
>
> A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[36]

In *Servicewide Specialists, Incorporated v. Court of Appeals*,[37] this Court held that no final determination of a case could be made if an indispensable party is not legally present therein:

> An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties that his legal presence as a party to the proceeding is an absolute necessity.

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[36] *Arcelona v. Court of Appeals*, 345 Phil. 250, 269-270 (1997).

[37] 321 Phil. 427, 434 (1995).

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> In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.

The rationale for treating all the co-owners of a property as indispensable parties in a suit involving the co-owned property is explained in *Arcelona v. Court of Appeals*:[38]

> As held by the Supreme Court, were the courts to permit an action in ejectment to be maintained by a person having merely an undivided interest in any given tract of land, a judgment in favor of the defendants would not be conclusive as against the other co-owners not parties to the suit, and thus, the defendant in possession of the property might be harassed by as many succeeding actions of ejectment, as there might be co-owners of the title asserted against him. The purpose of this provision was to prevent multiplicity of suits by requiring the person asserting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

The CA, in finding Tayud Golf as an indispensable party, made the following observations:

Petitioner's claim of ownership over the one hundred eight (108) parcels of land is based on a Deed of Assignment executed by Apollo Homes in favor of the former. After judiciously going through the petition and the appended documents, We noted that out of the one hundred eight (108) properties:

> 1. One hundred six (106) parcels were included in the Affidavit of Quitclaim and Waiver purportedly executed by Casals and Ouano in favor of Osmeña, which the heirs of Casals are assailing in the instant case;
>
> 2. Seven (7) parcels, namely, Lots 787, 1051, 1154, 1157, 1167, 1189 and 1276, were included in the Motion for Separate Partial Judgment filed by the heirs of Casals, which was granted

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[38] 345 Phil. 268-269 (1997), citing Moran, *Comments on the Rules of Court*, Vol. 1 (1970 ed.), pp. 182-83, and *Palarca v. Baguisi*, 38 Phil. 177, 180-181 (1918). See also *Pobre v. Blanco*, 17 Phil. 156, 158-159 (1910); *Araneta v. Montelibano*, 14 Phil. 117, 123-124 (1909).

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by the trial court per the first assailed order, with the exclusion of Lot 1051, and in the Writ of Partial Execution;

3. Twenty-seven (27) parcels were already issued certificates of title under the name of petitioner as early as 1993, to wit:

Lot No.	Title No.	Date Registered	Area (sq m,)
1) 1231	TCT TP-6417	April 21, 1993	765
2) 1242	TCT TP-6416	April 21, 1993	1,774
3) 792	TCT TP- 4717	January 12, 1995	11,573
4) 1048	TCT TP-4716	January 12, 1995	3,493
5) 1197	TCT TP-4719	January 12, 1995	1,563
6) 1243	TCT TP- 4718	January 12, 1995	1,358
7) 1275	TCT TP-4714	January 12, 1995	4,392
8) 1149	OCT 1282	December 16, 1996	3,717
9) 1150	OCT 1281	December 16, 1996	906
10) 1152	OCT 1280	December 16, 1996	389
11) 1153	OCT 1278	December 16, 1996	1,727
12) 1154	OCT 1279	December 16, 1996	1,338
13) 1157	OCT 1284	December 16, 1996	1,209
14) 1158	OCT 1283	December 16, 1996	1,379
15) 1069	TCT TP-12881	April 2, 1997	5,948
16) 1148	TCT TP-12882	April 2, 1997	2,046
17) 1177	TCT TP-12883	April 2, 1997	1,688
18) 782	OCT 1870	May 6, 2004	2,034
19) 783	OCT 1871	May 6, 2004	1,153
20) 790	OCT 1872	May 6, 2004	2,038
21) 794	OCT 1873	May 6, 2004	4,220
22) 1055	OCT 1874	May 6, 2004	4,156
23) 1241	OCT 1875	May 6, 2004	7,816
24) 1245	OCT 1876	May 6, 2004	2,132
25) 1246	OCT 1877	May 6, 2004	2,973
26) 1261	OCT 1879	May 6, 2004	3,702
27) 1352	OCT 1880	May 6, 2004	6,395

The aforecited ten (10) original certificates of title issued on May 6, 2004 were pursuant to a decision dated April 26, 1996 in Land Registration Case No. N-407;

4. Seven (7) parcels, namely, Lots 1195, 1196, 1198, 1232, 1234, 1267, and 1269, the subject matter in petitioner's application for land registration, which was granted on May 31, 2006 per this Court's decision in CA G.R. CV No. 71113, are still pending issuance of certificates of title;

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5. Seventy-four (74) parcels were issued tax declarations under the name of petitioner; and

6. Petitioner has been paying the real estate taxes thereof as evidenced by various tax clearances issued on March 13, 2007 covering seventy-nine (79) properties, and their respective real estate tax receipts.

Evidently, petitioner is encompassed within the definition of an indispensable party. Being the **registered owner of at least twenty-seven (27) properties included in the Affidavit of Quitclaim and Waiver, not to mention the other seven (7) properties, which are pending issuance of certificates of title by virtue of this Court's decision dated May 31, 2006, and the other properties, which were declared for taxation purposes under its name**, petitioner definitely has such a direct interest in the controversy or subject matter of the instant case.[39]

However, petitioners dispute the factual findings of the CA. Respondent Tayud Golf, in its Comment dated September 29, 2008, questioned the mode of appeal resorted to by the petitioners. The former claims that under Rule 45, Section 1, which the latter avail themselves of, only questions of law and not of facts must be raised. The Rule states:

SECTION 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

The above Rule is with certain exceptions as set forth in previous decisions of this Court. As mentioned in *Cosmos Bottling Corporation v. Nagrama, Jr.:*[40]

The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, as follows:

[39] *Id.* at 75-77.

[40] G.R. No. 164403, March 4, 2008, 547 SCRA 571, 585, citing *Reyes v. Court of Appeals (Ninth Division)*, 258 SCRA 651, 659 (1996) and *Floro v. Llenado*, 244 SCRA 713 (1995). (Emphasis supplied.)

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(1) when the inference made is manifestly mistaken, absurd or impossible;

(2) when there is a grave abuse of discretion;

(3) when the finding is grounded entirely on speculations, surmises or conjectures;

(4) **when the judgment of the Court of Appeals is based on misapprehension of facts**;

(5) when the findings of fact are conflicting;

(6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) when the findings of the Court of Appeals are contrary to those of the trial court;

(8) when the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

A close reading of the assigned errors imputed by petitioners to the CA categorically shows that they are questioning the latter's judgment on the ground of misapprehension of facts. Therefore, this Court, based on the fourth exception above-cited, may resolve the errors enumerated by petitioners in the present petition.

Briefly, petitioners claim that the CA erred in finding that:

1. Mere inclusion of the 108 parcels of land that respondent Tayud Golf claimed under the deed of assignment in the affidavit of quitclaim and waiver renders the RTC without any jurisdiction to issue the assailed orders;

2. Respondent Tayud Golf is an indispensable party;

3. Petition can be given due course;

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4. RTC was without jurisdiction to issue the assailed orders and writ; and

5. The Orders dated December 9, 2002 and March 21, 2003 and the writ of partial execution is null and void in their entirety.

Petitioners claim as their first assigned error that the finding of the CA that mere inclusion of the 108 parcels of land that respondent Tayud Golf claimed under the deed of assignment in the Affidavit of Quitclaim and Waiver renders the RTC without any jurisdiction to issue the orders. They aver that this inclusion was borne out of the CA's reliance on the contention of respondent Tayud Golf in its Petition for Annulment of the Final Orders[41] that petitioners were adjudged to be the co-owners of, among others, one hundred eight (108) parcels of land which are actually owned by respondent Tayud Golf. According to petitioners, such reliance is erroneous, because the Order dated December 9, 2002 did not adjudge them as the co-owners of 108 parcels of land being claimed by respondent Tayud Golf. In fact, as stated by petitioners, out of the 176 parcels of land prayed for in the motion for separate partial judgment, only 7 were included in the said motion; and out of the 173 parcels of land granted by the RTC in its assailed Order dated December 9, 2002, only 6 were claimed by respondent Tayud Golf, and not one of the tax declarations of the said 6 parcels of land was canceled and transferred to the joint names of Osmeña and petitioners by reason of the implementation of the writ of execution.

A close examination of the CA's decision and the basis of its conclusions render the above argument of petitioners without any merit. All of the findings of the CA were based on documents, the contents of which are undisputed. In stating that respondent Tayud Golf had a claim of ownership over 108 parcels of land, the CA had as its basis the Deed of Assignment executed by Apollo Homes in favor of the same respondent. In finding that out of the 108 parcels of land being claimed by respondent Tayud Golf, 106 parcels were included in the Affidavit of Quitclaim and Waiver, the CA based such conclusion on the very same

[41] *Rollo,* pp. 358-381.

Affidavit of Quitclaim and Waiver. In its determination that 7 parcels of land being claimed by respondent Tayud Golf were included in the Motion for Separate Judgment filed by petitioners, which was eventually granted by the RTC in its first assailed Order and in the Writ of Partial Execution, the CA referred to the said Motion, Order and Writ. In finding that 27 parcels of land were registered under the name of respondent Tayud Golf, the CA took into consideration the certified true copies of Transfer Certificates of Title (TCTs) and Original Certificates of Title (OCTs) submitted by the same respondent. All other facts similar or pertaining to those earlier mentioned have been correctly appreciated by the CA and were properly cited.

It must be noted that the original action was initiated by petitioners through their complaint before the RTC regarding the Affidavit of Quitclaim and Waiver executed by the deceased Casals and Ouano in favor of respondent Osmeña; and, as shown in the same affidavit, 106 parcels of land are either owned or being claimed by respondent Tayud Golf. Therefore, the CA correctly concluded, based on its findings of fact earlier mentioned, that being the registered owner of at least 27 properties included in the Affidavit of Quitclaim and Waiver, respondent Tayud Golf had a direct interest in the original action.

Based on the above premise, the CA correctly ruled that respondent Tayud Golf was an indispensable party to the original action. However, petitioners claim otherwise. Again, they claim that the parcels of land included in the assailed Orders and Writ are distinct and separate from those claimed by respondent Tayud Golf. What the petitioners fail to state, in simple terms, is that the assailed Orders and Writ would not have come into fruition if not for their original complaint, which sought to nullify the Affidavit of Quitclaim and Waiver. As discussed earlier, the properties of respondent Tayud Golf were included in the same Affidavit of Quitclaim and Waiver; hence, its interest in the said properties will surely be affected by the outcome of the case. Again, this Court reiterates that an indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in his absence

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without injuring or affecting that interest.[42] As such, it is apparent that respondent Tayud Golf is indeed an indispensable party.

Anent the contention of petitioners that the petition for annulment filed by respondent Tayud Golf with the CA should not have been acted upon by the latter, because the former did not assail the Order dated June 24, 2002,which contained the settlement agreement of the parties; and the other defendants in the original action - Euclid Po, Tri-Plus Holdings and the Spouses De Jesus - were not impleaded. In short, petitioners are questioning the jurisdiction of the CA in resolving the Petition for Annulment filed by respondent Tayud Golf. The CA acted on the said petition based on its jurisdiction conferred by law, specifically Rule 47 of the Rules of Civil Procedure, which states that:

> Section 1. *Coverage*. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.
>
> Section 2. *Grounds for annulment*. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
>
> x x x x x x x x x
>
> Section 4. *Filing and contents of petition*. - The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

By virtue of the above law, the CA had jurisdiction to act upon the Petition for Annulment filed by respondent Tayud Golf. The said petition, sufficient in form and substance, left the CA with no other recourse but to act upon it. The well-settled rule is that the nature of an action/petition is determined by the material allegations it contains, irrespective of whether the petitioner is entitled to the reliefs prayed for

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[42] *Foster-Gallego v. Galang*, G.R. No. 130228, July 27, 2004, 435 SCRA 275, 292-293, citing *Metropolitan Bank & Trust Co. v. Alejo*, 417 Phil. 303 (2001).

therein.[43] A close reading of the petition filed by respondent Tayud Golf distinctly indicates that the grounds relied upon were based on extrinsic fraud and lack of jurisdiction. Furthermore, respondent Tayud Golf had no other recourse than to file the said petition.

The non-inclusion of Euclid Po, Tri-Plus Holdings, and the Spouses De Jesus is also of no importance, as the claim of respondent Tayud Golf does not involve their properties. Respondent Tayud Golf, in its petition for annulment did not include a claim of ownership over Lot Nos. 945, 1340 and 1051 in which Euclid Po, Tri-Plus Holdings, and the Spouses De Jesus are involved. Likewise, the failure to assail the Order dated June 24, 2002, which contained the settlement agreement of the parties, is of no significance and does not divest the CA of its jurisdiction to act on the Petition for Annulment. Respondent Tayud Golf, in its Comment, was right in stating that:

> x x x the Order dated June 24, 2002 was apparently the result of agreements between petitioners and Antonio Osmeña. Obviously, respondent Tayud is not bound by any "agreements," as it was never a party thereto. Under the "*res inter alios acta nocere non debet*" rule, respondent Tayud is not bound by any statements, acts or omissions of other parties.[44]

Things done between strangers ought not to injure those who are not parties to them.[45]

Petitioners also cited *Republic v. Sandiganbayan*,[46] wherein this Court ruled that the failure to join an indispensable party does not divest the court of jurisdiction. However, the said case is inapplicable. In the earlier ruling of this Court, the one

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[43] *Guiang v. Co*, G.R. No. 146996, July 30, 2004, 435 SCRA 556, 561-562, citing *Intestate Estate of Ty v. Court of Appeals*, 356 SCRA 661 (2001).

[44] *Rollo*, p. 1260.

[45] *Dynamic Signmaker Outdoor Advertising Services, Inc., et al. v. Potongan*, G.R. No. 156589, June 27, 2005, 461 SCRA 328, 340, citing *National Power Corporation v. NLRC*, 272 SCRA 704 (1997).

[46] *Supra* note 24.

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who raised the issue of non-joinder of indispensable parties was also a party to the case whereas in the questioned decision of the CA, the one who sought to be joined was never made a party to the original action. Mrs. Imelda Marcos, a respondent to the case, claimed that foreign foundations should have been impleaded as they were indispensable parties without whom no complete determination of the issues could be made. In ruling against the argument of respondent Marcos, this Court said:

> The rulings of the Swiss court that the foundations, as formal owners, must be given an opportunity to participate in the proceedings hinged on the assumption that they owned a nominal share of the assets. But this was already refuted by no less than Mrs. Marcos herself. Thus, she cannot now argue that the ruling of the Sandiganbayan violated the conditions set by the Swiss court. The directive given by the Swiss court for the foundations to participate in the proceedings was for the purpose of protecting whatever nominal interest they might have had in the assets as formal owners. But inasmuch as the ownership was subsequently repudiated by Imelda Marcos, they could no longer be considered as indispensable parties and their participation in the proceedings became unnecessary.[47]

Finally, petitioners contend that the CA failed to take judicial notice of its prior final resolution in CA-G.R. SP No. 01286 entitled *Apollo Homes Investment Corporation, et al. v. Erna Casals, et al.,* which, according to them, would subject the present case to the rule on *res judicata*. In *Apollo*, the CA dismissed the Petition for the Annulment of the Partial Compromise Agreement dated June 24, 2002, the Order denying the Motion for Reconsideration dated July 4, 2003, the Order denying the Motion for Partial Judgment dated December 9, 2005 and the Partial Judgment and the Writ issued pursuant thereto. The argument of petitioners should be given scant consideration. Under the rule of *res judicata*, also known as "bar by prior judgment," a final judgment or order on the merits, rendered by a Court having jurisdiction over the subject matter and of the parties, is conclusive in a subsequent case

[47] *Rollo*, pp. 270-271.

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between the same 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. The requisites essential for the application of the principle are: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the court rendering the same must have jurisdiction over the subject matter and the parties; and (4) there must be, between the two cases, identity of parties, identity of subject matter, and identity of causes of action.[48]

The principle of *res judicata* is not applicable to the questioned decision of the CA, as it lacks some essential elements. *Apollo* was dismissed by the CA not on its merits but on technicality. As read from the CA Resolution[49] dated January 26, 2006, the following are the reasons for the dismissal of the petition:

> However, a brief examination of said Petition shows the following fatal infirmities:
>
> 1. petitioner failed to allege when did they receive the above-mentioned Orders;
>
> 2. the authority given by the petitioner Apollo Homes and Investment Corporation to Engr. Inocentes M. Ouano is a mere photocopy.
>
> 3. petitioner merely attached a plain copy of the Order dated June 24, 2002;
>
> 4. petitioner failed to attach Affidavits of witnesses or documents supporting their cause of action.

From the above disquisitions, it can be surmised that respondent Tayud Golf is indeed an indispensable party to the original case, and a final adjudication of the said case cannot be made in his absence without injuring or affecting his interest.

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[48] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 388, citing *Firestone Ceramics v. Court of Appeals*, 372 Phil. 401, 404 (1999).

[49] *Rollo*, pp. 345-346.

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WHEREFORE, the Petition for Review dated July 16, 2008 is *DENIED* for lack of merit. The Decision of the Court of Appeals, dated February 13, 2008 in CA-G.R. SP No. 02610, is *AFFIRMED in toto*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Nachura, JJ.,* concur.

EN BANC

[G.R. No. 184586. July 22, 2009]

RAFAEL FLAUTA, JR., LUCRESIA ORDINARIO, NEMESIO GOSE, RICARDO BAJADE, JOSEPH ORAYLE, GIL BATILO, ROMULO HILARIO, BEVELYN ZAPANTA and GENOVIVA JEHODO, *petitioners, vs.* **THE COMMISSION ON ELECTIONS, Represented by its Chairman, Honorable JOSE A.R. MELO, The SPECIAL BOARD OF CANVASSERS of the Municipality of Ninoy Aquino, namely: JOSEPHINE MACAPAS, REGINALD ABAD, OLIVER ALAR and DANTE MANGANAAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; BROAD POWERS, DISCUSSED. — In *O'hara v. Commission on Elections*, the Court reiterated the COMELEC's broad power, derived from our fundamental law, to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum