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of accused-appellant as prayed for in the Petition. The Solicitor General further declared: "Considering the report of Magdalena M. Mogridge, Chief, Documents Section of the Bureau of Corrections, (Annex "I" hereof), appellant is now eligible for immediate release, pursuant to Article 29 of the Revised Penal Code, having undergone preventive imprisonment for a period of more than the possible maximum imprisonment to which he may be sentenced."

IN VIEW OF THE FOREGOING, the Petition in G.R. No. 121424 is hereby GRANTED, and the accused-appellant Mauro P. Magtibay is hereby ORDERED RELEASED IMMEDIATELY, unless he is being detained on some other legal charge. The Petition in G.R. No. 104992 is DISMISSED for being moot and academic.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Francisco, JJ.,* concur.

SECOND DIVISION

[G.R. No. 90215. March 29, 1996]

ERNESTO ZALDARRIAGA, JESUS ZALDARRIAGA, JR. and GUADALUPE ZALDARRIAGA, *petitioners, vs.* COURT OF APPEALS and BASILIA ZALDARRIAGA; ANTONIA ZALDARRIAGA on her behalf and on behalf of her minor children, namely,

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Edgardo, Romeo, Jesus, Ronaldo, William, Miguel and Rebecca, all surnamed Zaldarriaga; NIDA and JOSE, all surnamed ZALDARRIAGA; JOSE, JR., ALICIA, PEDRO, MELBA, NELLY and ALFREDO, all surnamed ZALDARRIAGA, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; JUDGMENT; *RES JUDICATA*; MAYBE DISREGARDED IF ITS APPLICATION WOULD INVOLVE THE SACRIFICE OF JUSTICE TO TECHNICALITY.** — *Res Judicata* does not find application in the instant petition as it would not serve the interest of substantial justice. The principle of *res judicata* is a fundamental component of our judicial system but, as this Court has time and again held, it should be disregarded if its application would involve the sacrifice of justice to technicality. If the principle should be applied at all, it should be in the context of its less familiar concept which the Court expounded in Vda. de Cruzo *v.* Carriaga, Jr., (G.R. Nos. 75109-10, June 28, 1989), as follows: "(The) less terminological usage of *res judicata* as a rule on conclusiveness of judgment refers to the situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined therein or which were necessarily included therein. Consequently, since other admissible and relevant matters which the parties in the second action could properly offer are not concluded by the said judgment, the same is not a bar to or a ground for dismissal of the second action."

2. **ID.; ID.; "RESERVATION" IMPORTS THE CONTEMPLATION OF FURTHER PROCEEDING.** — A "reservation" for the filing of another action in a decision which is usually preceded by the phrase "without prejudice" imports the

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contemplation of further proceedings. When said phrase appears in an order or decree, it implies that the judicial act is not intended to be *res judicata* on the merits of the controversy.

APPEARANCES OF COUNSEL

F. B. Santiago, Nalus, Magtalas, Catalan & Associates for petitioners.

Rolando N. Medalla and Jose Guiñez, Jr., Sycip Salazar Hernandez & Gatmaitan, Juanito Sinay for private respondents.

DECISION

ROMERO, *J.*,:

This is the sixth time that an issue or incident spawned by opposing claims of two sets of first cousins and, earlier, their respective mothers, over the Hacienda Escolastica in Mabini, Cadiz, Negros Occidental has been elevated to this Court for resolution. We resolve the instant petition for review on certiorari in the hope that, as one of them[1] says, "peace and tranquility to all parties" may at last be attained.

Hacienda Escolastica, consisting of Lots Nos. 936, 937, 940 and 941, originally covered by Transfer Certificates of Title Nos. T-6536, T-6537, T-6538 and T-6539, has an area of 228.54 hectares. It belonged to the conjugal partnership of Pedro Zaldarriaga and Margarita Iforong. During their marriage, the couple begot four sons named Jesus, Jose, Manuel and Julio.

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[1] Private respondent Alicia Zaldarriaga-Lim, in her ex-parte motion for an early decision (*Rollo*, p. 486).

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On May 17, 1919, Margarita died leaving one-half (1/2) or four-eighths (4/8) of the hacienda to her husband as his conjugal share and one-eighth (1/8) share to each of her sons. Thereafter, Manuel and Julio died single and without issue. Their combined two-eighths (2/8) shares therefore passed by legal succession to their father, Pedro, who consequently became the owner of six-eighths (6/8) or three-fourths (3/4) share of the hacienda.

In 1944, Jose died survived by his wife, Basilia, and their seven children, named Carlos,[2] Jose, Alicia, Melba, Nelly, Pedro and Alfredo. Two years later or in 1946, Jesus also died. He was survived by his wife, Consuelo, and three children: Ernesto, Guadalupe and Jesus, Jr. Hence, Pedro outlived his four children.

On June 5, 1953, Basilia vda. de Zaldarriaga, acting as the judicial administratrix of the estate of Jose, filed Civil Case No. 2705 against the said surviving children of Jesus before the then Court of First Instance of Negros Occidental, for the partition of the hacienda and for accounting of its rents, profits, produce and fruits. During the pendency of the case or on January 14, 1956, Pedro, the Zaldarriaga patriarch, executed a "deed of definite sale" conveying his 6/8 share in the hacienda to his grandchildren by Jesus, the defendants in the case. Consequently, TCT Nos. T-6536, T-6537, T-6538 and T-6539 were cancelled and TCT Nos. T-20122, T-19141, T-20143 and T-20124 corresponding to Lots Nos. 936, 937, 940 and 941 were issued to said

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[2] Carlos Zaldarriaga died on December 19, 1970 survived by his wife Antonia and children Eduardo, Romeo, Jesus, Ronaldo, William, Miguel and Rebecca (*Rollo*, p. 269).

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grandchildren. This turn of events also resulted in the amendment of the complaint in Civil Case No. 2705 in order that the nullification of the said sale would be made an integral part thereof.

On March 30, 1957, the lower court rendered a decision in Civil Case No. 2705 (1) declaring as null and void the order of the intestate court in Special Proceedings No. 483 which approved the project of partition and declaration of heirs made by Jesus' children, and cancelling the sugar quotas listed in their names in the Sugar Quota Office; (2) declaring null and void the deed of sale of 6/8 portion of the hacienda which was executed by Pedro in favor of Jesus' children; (3) ordering Pedro to account for and pay the intestate estate of Jose the amount of P94,586.00 representing rentals, profits and other claims, and to pay said estate every crop year P3,794.00 as rentals and P500.00 as profit, and (4) ordering the partition and distribution of the hacienda consisting of Lots Nos. 936, 937, 940 and 941 as follows: (a) to Pedro, 6/8 of the land or 172.68 hectares, 3/5 of the entire sugar quota of the hacienda for A sugar or 4479 piculs and 3/5 of the entire sugar quota for the hacienda for B and C sugar; (b) to the intestate estate of Jose or his heirs 28.78 hectares of the hacienda, 1/5 of the entire sugar quota for the hacienda for A sugar or 1493 piculs, and 1/5 of the entire sugar quota for B and C sugar; (c) to the legitimate heirs of Jesus, 28.78 hectares of the hacienda, 1/5 of the entire sugar quota for the hacienda for A sugar and 1/5 of the entire sugar quota for B and C sugar.

Since the boundaries of the respective shares of the co-owners had not yet been delineated and marked, the court appointed clerk of court Jose Azcona and Segundo Hipolito as commissioners pursuant to Sec.

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3, Rule 71[3] of the Rules of Court. The court also ordered Pedro to pay the intestate estate of Jose P15,000 as moral damages and P10,000.00 as exemplary or corrective damages and the heirs of Jesus to pay the same estate P5,000.00 as moral damages and P5,000.00 as exemplary damages. Both Pedro and the heirs of Jesus were ordered to pay the said estate P10,000.00 as attorney's fees and the costs of the suit. The court also dismissed the defendants' counterclaim.

Two months later or on May 29, 1957, Pedro died. Consuelo vda. de Zaldarriaga, the widow of his son Jesus, was appointed judicial administratrix of his estate. As such administratrix, Consuelo filed a notice of appeal, appeal bond and record on appeal from the said decision of March 30, 1957. Basilia, Jose's widow, opposed the appeal contending that Consuelo had not really filed said requirements for an appeal but merely a motion asking for leave to adopt her (Basilia's) appeal bond and record on appeal. The lower court sustained Basilia's opposition, thereby prompting Consuelo to file a petition for mandamus before this Court. Docketed as L-13252, the petition was decided on April 29, 1961[4] against petitioner Consuelo with the Court holding that "a decision or order directing partition is not final because it leaves something more to be done in the trial court for the complete disposition of the case." Hence, the Court therein denied the petition but instructed the lower court "to proceed in Civil Case No. 2705 in accordance with this decision and the procedure provided in Rule 71 of the Rules of Court."

For her part, Basilia appealed the decision in Civil Case No. 2705 to this Court. It was docketed as *L-*

[3] Now Rule 69 (Partition) of the 1964 Rules of Court.
[4] 1 SCRA 1188.

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13424. On May 31, 1961, the Court dismissed the appeal[5] on the ground that it was taken prematurely as, consonant with its ruling in L-13252, the decision appealed from was merely interlocutory because the lower court still had to go through the proceedings outlined in Rule 71.

Accordingly, the appointed commissioners began to partition the hacienda. On December 1, 1962, they submitted their report which the court approved on May 3, 1963. The respective shares of the parties were raffled among them and that of the plaintiffs (Basilia and her children) was accordingly adjudicated to them by the lower court.

Clearly dissatisfied with the final decision of the lower court, Consuelo and her children appealed to this Court through *L-21888*. In the decision of June 26, 1967,[6] this Court, for lack of jurisdiction over the amount in controversy (totalling P156,886.00), remanded the case to the Court of Appeals as this Court at that time could take jurisdiction only over claims on properties valued at more than P200,000.00.

Thus, taking jurisdiction over the appeal, the Court of Appeals decided CA-G.R. No. 39743-R on September 30, 1971.[7] It found that the hacienda had been "partitioned in 1919 among the heirs" of Margarita; that Pedro and his four sons entered into an extrajudicial agreement assigning unto themselves definite portions of the hacienda; that except for

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[5] 2 SCRA 356.

[6] 20 SCRA 432.

[7] Penned by Associate Justice Eulogio S. Serrano and concurred in by Associate Justices Cecilia Muñoz Palma and Lourdes P. San Diego.

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Jose, each of them took possession of his share and cultivated it; that Jose tilled and planted his portion only in 1942 to 1944 and thereafter it was left idle; that from 1919 until his death in 1944, Jose never asked for his share in the produce of his father and brothers; that while the 7/8 portion of the hacienda was tilled and developed, its southern portion corresponding to the 1/8 share of Jose was left uncultivated;[8] that, by the number of years that defendants (Consuelo and her children) had been openly and adversely in possession of the 7/8 portion, they had acquired exclusive ownership thereof and prescription had cured whatever defects there might have been in title or acquisition; that from 1919 to 1953 or for 34 years, plaintiffs (Basilia and her children) did not claim the fruits of the hacienda nor demand its partition, and that Basilia herself was guilty of laches in waiting for almost a decade before bringing an action in court. In view of these facts, the Court of Appeals resolved to "forego discussion of the other errors raised by defendants which are thereby rendered academic" and *reversed* the decision of the lower court in Civil Case No. 2705.

However, the finality of said decision on January 4, 1972[9] did not deter Basilia from elevating the same decision to this Court through a petition for review on certiorari docketed as L-34557.[10] On February 3, 1972, this Court promulgated minute resolution:

"L-34557 (Basilia F. Vda. de Zaldarriaga, etc. v. Pedro Zaldarriaga, deceased, substituted by Consuelo Tan Vda.

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[8] According to Jose's daughter, Alicia, their family resided in Iloilo City where she was born in 1926 (*Rollo*, p. 26).

[9] Exh. "7-A"; Records, p. 1030.

[10] The timeliness of this petition is not extant on the records.

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de Zaldarriaga, etc., et al.). — Considering the allegations of, the issues raised and the arguments adduced in the petition for review on certiorari of the decision of the Court of Appeals, THE COURT RESOLVED to deny the petition for being factual (insufficient showing that findings of fact are unsupported by substantial evidence) and for lack of merit. The manifestation of counsel for petitioner, dated January 28, 1972, is NOTED."[11]

Basilia filed a motion for the reconsideration of the said resolution. On May 8, 1972, this Court denied it in the following resolution:

"Upon consideration of the motion for reconsideration of the petitioner in G.R. No. L-34557, Basilia F. Vda. de Zaldarriaga, etc. *vs.* Pedro Zaldarriaga, etc., et al., and the opposition thereto of respondents, and it appearing that without considering the offer of evidence, assuming that this should not have been taken into account by the Court of Appeals (even if its holding that the so-called dead-man's statute' does not apply to this case) is correct, there is substantial evidence to sustain the appellate court's conclusion that the properties herein involved had already been previously partitioned before the death of petitioner's husband, Jose Zaldarriaga, and that it is clear that neither her deceased husband during her lifetime, nor the petitioner ever laid claim to the sugar quotas alleged in the complaint for over 33 years, for which reason, the present action has prescribed, and considering that it is indisputable, at this stage, that there is a specific 1/8 portion of the Hacienda share belonging to petitioner in the estate of her husband's mother, and if it has remained uncultivated and unproductive, it is because petitioner, and her husband before her, have failed to work on the same, and that, as held by the Court of Appeals, the other causes of action of petitioner have already become academic, the same being premised on the nonexistence of the partition found by the appellate

[11] Exh. "9", Record, Vol. II, p. 1048.

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court as having been effected during the lifetime of petitioner's husband, the Court resolved to *DENY* the motion for reconsideration *without prejudice to whatever action not yet prescribed, that the children, if any, of the late Jose Zaldarriaga may have for the recovery of their share in the lands in question as part of the estate of the now deceased Pedro Zaldarriaga.*" (Italics supplied.)[12]

Acting on cue, the following year, or on June 19, 1973, Basilia and her children filed Civil Case No. 117-V against Consuelo and her children before the then Court of First Instance of Negros Occidental. Claiming three-eighths (3/8) or one-half (1/2) of Pedro's six-eighths (6/8) share in the hacienda which allegedly was "fictitiously conveyed" to Consuelo's children, they prayed that the deed of sale executed by Pedro as regards said portion of the hacienda be declared void *ab initio*; that 3/8 or 1/2 of the said estate of Pedro be reconveyed to them, and that said property be partitioned with accounting of its produce plus moral damages.[13]

In their answer with counterclaim, the defendants alleged that the action was barred by *res judicata*.[14] They further alleged lack of personality to sue on the part of the plaintiffs, no cause of action and prescription. Thereafter, they filed a motion for preliminary hearing under Sec. 5, Rule 16 of the Rules of Court at the same time seeking the dismissal of the complaint on the ground of *res judicata*.[15] The plaintiffs opposed this motion.

On September 4, 1973, the lower court, through Judge Victoriano C. Teleron, issued a resolution

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[12]Exh. "11", *Ibid.*, at p. 1060.
[13]*Rollo*, p. 86.
[14]*Ibid.*, p. 99.
[15]*Ibid.*, p. 108.

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dismissing the complaint and sustaining the defendants' theory of *res judicata.*[16] On the plaintiffs' contention that assuming that all the requisites for the application of the principle of *res judicata* were obtaining in the case, the same principle was nevertheless inapplicable considering the "reservation" made by this Court in the May 8, 1972 resolution in G.R. No. 34557 that the heirs of Jose may file "whatever action, not yet prescribed, that they may have for the recovery of their shares in the lands in question as part of the estate" of Pedro, the lower court said the reservation should "refer to some rights of the children of the late Jose Zaldarriaga *other than the subject-matter now litigated* in instant case" otherwise it would be assumed that "the appellate Courts were being deliberately inconsistent in its judgments and, against its established doctrines, encouraging multiplicity of suits affecting the same causes of action over the same subject-matter between the same parties."

Plaintiffs filed a motion for reconsideration and/or new trial on the ground that the said lower court resolution was contrary both to the actual facts of the case and to law.[17] Defendants countered with a motion to strike off the record and/or to dismiss the said motion for reconsideration on the ground that the same was a mere scrap of paper which should not be acted upon by the court.[18] Acting on said motions of the parties, on April 30, 1974, the court[19] denied defendants' motion, granted plaintiffs' motion for reconsideration and

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[16] *Ibid.*, p. 134.
[17] *Ibid.*, p. 149.
[18] *Ibid.*, p. 165.
[19] Presided by Judge Oscar R. Victoriano.

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reconsidered and set aside its resolution of September 4, 1973.[20]

As expected, the defendants filed a motion for the reconsideration of the April 30, 1974 order but the court denied the same. Hence, they filed a petition for certiorari before the Court of Appeals. Docketed as CA-G.R. No. 03164-R, the petition raised as principal issue the applicability of the principle of *res judicata*, stressing that the plaintiffs' action to nullify the deed of sale dated January 14, 1956 had been barred by the judgment in CA-G.R. No. 39743-R. On the other hand, plaintiffs-respondents invoked once again the significance of the reservation clause in this Court's resolution in L-34557 which, they believed, "defoliates the legal posture of the defendants."

On July 21, 1975, the Court of Appeals rendered a decision[21] dismissing the petition for certiorari and rejecting the *res judicata* theory. The appellate court reasoned in this wise:

"Even assuming, arguendo, that another case, Civil Case No. 2705 between the parties herein, which case is interrelated with the principal case, Civil Case No. 117-V, had already been decided by the Supreme Court in L-34557, the ground of *res judicata* as raised in the motion to dismiss the complaint cannot be sustained by virtue of the Supreme Court's ruling in L-34557 to the effect that its decision is without prejudice to whatever action, not yet prescribed, that the children, if any, of the late Jose Zaldarriaga may have for the recovery of their share in the lands in question as part of the estate of the now deceased Pedro Zaldarriaga."

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[20] *Rollo*, p. 184.

[21] Penned by Associate Justice Godofredo P. Ramos and concurred in by Associate Justices Andres Reyes and Mama D. Busran.

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Petitioners therein filed a motion for reconsideration of the said decision but it was denied by the Court of Appeals. Their second motion for reconsideration met the same fate. Undaunted, they brought the matter to this Court through a petition for review on certiorari docketed as *L-42177* and entitled "Ernesto Zaldarriaga *v.* Court of Appeals, et al." This Court denied the petition for lack of merit in the minute resolution of February 11, 1976.[22] Petitioners' motion for reconsideration was likewise denied on March 31, 1976.[23]

Meanwhile, in the lower court, the plaintiffs (Basilia and her children) filed on July 25, 1975 a motion for leave to amend their complaint citing as reason therefor oversight in alleging in the complaint "the distribution of the estate of Pedro Zaldarriaga."[24] Annexed to the motion was the amended complaint itself.[25] In due course, the parties filed a partial stipulation of facts and trial on the merits of the case ensued. On September 9, 1986, the lower court[26] rendered a decision in Civil Case No. 117-V in favor of the plaintiffs.[27] It decreed thus:

"WHEREFORE, judgment is hereby rendered as follows:

(1) — declaring null and void the 'Deed of Definite Sale' executed on January 14, 1956 by the late Pedro Zaldarriaga in favor of defendants Ernesto Zaldarriaga, Guadalupe Zaldarriaga and Jesus Zaldarriaga, Jr.;

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[22] Attached to the inside back cover of the *rollo*.
[23] Exh. "X".
[24] *Rollo*, p. 227.
[25] *Ibid.*, p. 229.
[26] Presided by Judge Romeo S. Habaradas.
[27] *Rollo*, p. 267.

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(2) — ordering the cancellation of transfer certificates of title Nos. T-20122, T-19141, T-20123 and T-20124 covering Lots 936, 937, 940 and 941 of Cadiz Cadastre, respectively and the reinstatement of transfer certificates of title Nos. T-6536, T-6537, T-6538 and T-6539 covering aforesaid lots, respectively;

(3) — ordering the partition of Lots Nos. 936-B, 937 and 941-A of Cadiz Cadastre, constituting the estate of Pedro Zaldarriaga under the 1919 oral partition, with one-half (1/2) thereof to belong to plaintiffs and the other one-(half) (1/2) to appertain to defendants and ordering defendants to execute a formal deed of conveyance in favor of plaintiffs covering their shares in said Lots Nos. 936-B, 937 and 941-A of Cadiz Cadastre. For this purpose, Atty. Fe Las Piñas-Gicano and Mr. Edilberto Y. Empestan are hereby appointed as commissioners (Sec. 3, Rule 69, Rules of Court) who, after having qualified by taking their oath, shall make and effect an equitable separation, delineation and partition of aforesaid lots in accordance with this decision and, thereafter, shall make a full report to this Court of the proceedings respecting the partition.

(4) — ordering the defendants to execute a formal deed of conveyance covering Lots Nos. 940 and 941-B in favor of plaintiffs who are now actually possessing said lots;

(5) — ordering the defendants to cause the titles of plaintiffs, after partition, to be free from the liens particularly the mortgage encumbrances, constituted by the defendants on Hda. Escolastica;

(6) — ordering the defendants to pay, jointly and severally, the plaintiffs the sum of P2,935,693.40 plus interest at the legal rate from the date of filing of the complaint until the amount is fully paid and to pay the plaintiffs the money equivalent of 4,095.95 piculs a year from 1977-1978 crop year up to the time that the shares of plaintiffs in the estate of the late Pedro Zaldarriaga are delivered to them by defendants, to be

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computed on the basis of the price fixed by the PHILSUCOM;

(7) — ordering the defendants to account for all lease rentals paid by Hanil Development Co., Ltd. for its use of the land for its crusher site and batching plant and to deliver to plaintiffs one-half (1/2) of said rentals;

(8) — ordering the defendants to pay, jointly and severally, the plaintiffs attorney's fees in the amount of P30,000.00 plus P500.00 for every court appearances; and

(9) — ordering the defendants to pay the costs of suit.

Defendants' counterclaims are dismissed.

SO ORDERED."

Defendants appealed to the Court of Appeals contending that the lower court was barred by prior judgment as regards the validity of the deed of sale executed by Pedro in their favor and that the award of damages was without basis in fact and in law (CA-G.R. No. CV No. 14450).

On July 14, 1989, the Court of Appeals rendered a decision[28] affirming *in toto* the lower court's decision of September 9, 1986. In holding that the principle of *res judicata* was inapplicable, the Court of Appeals said that "(T)he issue of the nullity or validity of the sale by the late Pedro Zaldarriaga to the herein appellants (his grandchildren), was not resolved by this Court in CA-G.R. No. 39743-R" because what

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[28] Penned by Associate Justice Antonio M. Martinez and concurred in by Associate Justices Floreliana Castro-Bartolome and Jesus M. Elbinias.

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was resolved therein was the issue of partition. As regards the validity of the deed of sale, the Court of Appeals noted that the defendants-appellants significantly "did not present any evidence at all to show that the deed of sale x x x was not simulated" and repeated the lower court's reasons for finding that the deed of sale was simulated and fictitious.[29] On the "reservation clause" in this Court's resolution in L-34557, it said:

"Appellants further put forth the thesis that the reservation clause in the SC resolution dated May 8,

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[29] The lower court's reasons are: "(1) the filing of Civil Case No. 2705 must have angered Pedro Zaldarriaga and the sale was his retaliatory act to deprive his other grandchildren, represented by his daughter-in-law, of their legitimate (sic) in the estate; (2) the sale executed by Pedro Zaldarriaga purports to convey his entire estate or property consisting of 6/8 share in Hda. Escolastica consisting of four parcels of land designated as Lots Nos. 936, 937, 940 and 941 of Cadiz Cadastre. But, the entire Lots Nos. 940 and 941-B of Cadiz Cadastre are admitted by defendants to have been adjudicated to the heirs of Jose Zaldarriaga under the 1919 oral partition; (3) the vendees (defendants) are the grandchildren of the vendor and they are all living in one house before and at the time of the sale, and even thereafter; (4) Pedro Zaldarriaga continued to be in possession and in cultivation of Hda. Escolastica; (5) the purchase price of P100,000.00 stated in the deed of definite sale is grossly disproportionate to the market value of the property declared for taxation purposes at P1,893,650.00. The fact that defendants were able to mortgage this property for a total of P4,122,400.00 only underscores this disparity; (6) at the time of the sale, Pedro Zaldarriaga was already old and there is no evidence at all, because defendants never presented any, to show that he was in need of so much money that he had to sell all his property, and especially, if viewed in the light that he was earning from the lands sold to defendants; (7) there was no evidence showing that at the time, vendees have lucrative means of livelihood to enable them to purchase the estate of Pedro Zaldarriaga. They do not have any property registered in their names. In fine, the sale by Pedro Zaldarriaga is void and of no effect since it is violative of Art. 221 of the Civil Code. It was a simulated alienation of property with intent to deprive the plaintiffs, as compulsory heirs, of their legitime." (Decision in Civil Case No. 117-V, pp. 18-19; *Rollo*, pp. 284-285).

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1972 encompasses only the reservable property to be inherited by the children of the late Jose Zaldarriaga; and that it should not be interpreted to include the property of the late Pedro Zaldarriaga under the deed of sale declared as fictitious by the trial court.

Again, the appellants have misinterpreted the full import and meaning of the reservation clause. The resolution of the Supreme Court does not say that the reservation clause should be confined to only the property subject of *reserva troncal.* As can be gleaned from the reservation clause, it speaks of the children's share 'in the lands in question as part of the estate of the now deceased Pedro Zaldarriaga.' The entire estate of the deceased Pedro Zaldarriaga was 'sold' by him to the appellants (his other grandchildren). To recover their shares in the estate of their grandfather, appellees necessarily have to institute proceedings for the nullification of the simulated 'deed of sale.'"

With respect to the award of damages, the Court of Appeals held that since the damages claimed by appellees "consist mainly of the fruits of their shares from the time of the death of Pedro Zaldarriaga (Art. 777 of the Civil Code) until the delivery to them of their respective shares," the lower court correctly awarded them.

Appellants filed a motion for the reconsideration of said decision but it was denied for lack of merit on September 19, 1989.[30] Thus, the children of Jesus filed the instant petition for review on certiorari. They contend that the Court of Appeals erred: (a) in interpreting the so-called "reservation clause" as a ground to relitigate issues which should have been barred by established jurisprudence and doctrines; (b) when it held that the issue of prior judgment

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[30] *Rollo*, p. 357.

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had been laid to rest by the Court of Appeals decision of July 21, 1975 in CA-G.R. No. 03164-R which affirmed both orders of June 30, 1974 and June 11, 1974; (c) in not finding that the complaint below lacks cause of action; (d) in declaring void the deed of definite sale on badges of fraud, and (e) in dismissing their counterclaim.

The several complaints, petitions and appeals arising from the same controversy which were filed by the parties in the court below, the Court of Appeals and this Court within a span of forty years creates a dizzying labyrinth of unresolved issues. Considering however, that the cases are centered on the 6/8 share of Pedro Zaldarriaga in Hacienda Escolastica which appears to be his whole estate, the core problem to be solved is: who owned said property upon Pedro's death — Pedro himself, in which case the property shall pass by intestacy to his descendants in accordance with the law on succession, or the children of Jesus by virtue of the deed of sale in their favor, to the exclusion ot the heirs of Jose? Since two complaints had been filed by the heirs of Jose, the ultimate solution to the problem may be found only upon a close examination of the proceedings had and the issues resolved in said cases. Thus, delving deeply into the allegations of both parties, the issue for resolution in the instant petition for review on certiorari is quite simple: may the principle of *res judicata* be applied vis-a-vis the "reservation clause" enunciated by this Court in its resolution of May 8, 1972 in L-34557?

At the outset, it should be made clear that the inapplicability of the principle of *res judicata* had been ruled upon by this Court in favor of private respondents in L-42177 in affirming the decision in CA-G.R. No. 03164-R.

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Moreover, considering the peculiar circumstances in this case, we find that *res judicata* does not find application in the instant petition as it would not serve the interest of substantial justice. The principle of *res judicata* is a fundamental component of our judicial system but, as this Court has time and again held, it should be disregarded if its application would involve the sacrifice of justice to technicality.[31] If the principle should be applied at all, it should be in the context of its less familiar concept which the Court expounded in *Vda. de Cruzo v. Carriaga, Jr.*[32] as follows:

"(The) less terminological usage of *res judicata* as a rule on conclusiveness of judgment refers to the situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined therein or which were necessarily included therein. Consequently, since other admissible and relevant matters which the parties in the second action could properly offer are not concluded by the said judgment, the same is not a bar to or a ground for dismissal of the second action."

The issue of the validity of the deed of sale had been offered for resolution in Civil Case No. 2705. But, even after the Court of Appeals had *implicitly* considered it in CA-G.R. No. 34793-R, this Court predicated the resolution of May 8, 1972 in L-34557 upon the issue of partition notwithstanding the private

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[31] Ronquillo *v.* Marasigan, L-11621, May 31, 1962, 5 SCRA 304, 312, cited in Republic *v.* De los Santos, L-30240, March 25, 1988, 159 SCRA 264, 285 and in the concurring opinion of Justice Florenz D. Regalado in Sumaoang *v.* Judge, RTC, Br. XXXI, Guimba, Nueva Ecija, G.R. No. 78173, October 26, 1992, 215 SCRA 136, 150-151

[32] G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 339 cited in De la Cruz *v.* Court of Appeals, G.R. No. 85450, July 3, 1990, 187 SCRA 165, 171-172 and Calalang *v.* Register of Deeds of Quezon City, G.R. No. 76265, April 22, 1992, 208 SCRA 215, 224.

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respondents' vigorous espousal of the nullity of the deed of sale in their petition before this Court wherein they correctly contended:

"Again, on another cause of action in plaintiff's (sic) the court *a quo* had held that the sale by defendant Pedro Zaldarriaga of his entire share (6/8) of the hacienda, including the sugar quota, to his co-defendants *was fictitious* and *fraudulent*, hence it was annulled and set aside. Certainly, said portion of the trial court's decision — we humbly submit — cannot be passed over by the Court of Appeals, on the ground that the matter had become academic because of the finding that there was partition. Indeed, how could the matter of the annulment of the sale become academic, especially with the death of Pedro Zaldarriaga his share in the property becomes part of his estate to be inherited by Jesus and Jose (represented by their children and his surviving spouse) (Art. 986, Civil Code of the Philippines). In other words, the question as to whether the sale was null and void, on the ground that it was fictitious and fraudulent, is a material issue which is not resolved by the mere fact that the court had made a finding that there was already a partition of the property."[33]

Nonetheless, in the same May 8, 1972 resolution, the Court, exercising its discretion, considered the issue of the validity of the deed of sale as a matter which should be litigated in another action pertaining to the estate of Pedro. In this regard, it should be underscored that when Civil Case No. 117-V was filed, the action to nullify the deed of sale had not yet prescribed considering that the issue was raised in Civil Case No. 2705 as soon as the lots involved were sold and registered in petitioners' name.[34] The

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[33] Exh. "8", Record, Vol. II, p. 1031 & 1044-1045.

[34] An action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years counted from the date of registration of the deed or the date of the issuance of the certificate

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amendment of the complaint in Civil Case No. 2705 to include the prayer for the nullity of the deed of sale amounted to the filing of an action thereon which interrupted the running of the prescriptive period.[35]

Thus, by appending the "reservation clause" in the resolution of May 8, 1972, this Court in effect waived the applicability of the principle of *res judicata*. A "reservation" for the filing of another action in a decision which is usually preceded by the phrase "without prejudice" imports the contemplation of further proceedings. When said phrase appears in an order or decree, it implies that the judicial act is not intended to be *res judicata* on the merits of the controversy.[36] While in *Gatus v. Court of Appeals*[37] the Court held that a reservation not falling within the provisions of Rule 17 of the Rules of Court[38] is a "mere surplusage, for, whenever the law gives a party the right to bring an action, he

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of title over the property (Heirs of Jose Olviga *v.* Court of Appeals, G.R. No. 104813, October 21, 1993, 227 SCRA 330, 334-335).

[35] Art. 1155, Civil Code. See: Ledesma *v.* Court of Appeals, G.R. No. 106646, June 30, 1993, 224 SCRA 175, 177.

[36] 50 C.J.S. 70 citing Public Service Commission of Missouri *v.* Brashear Freight Lines, Mo., 61 S.Ct. 784, 312 U.S: 621, 85 L.Ed. 1983 and other cases.

[37] L-34425, January 28, 1980, 95 SCRA 530, 531.

[38] The pertinent provision of Rule 17 states:

"Sec. 2. *Dismissal by order of the court.* — Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice."

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may do so without the necessity of any judicial reservation," the reservation made by this Court in L-34557 in the exercise of its discretion was aimed at giving the private respondents another opportunity to ventilate their valid claims to Pedro's estate.

Worth noting is the fact that in both Civil Cases Nos. 2705 and 117-V, the lower court arrived at the same conclusion regarding the nullity of the deed of sale. That fact, considered with the affirmance by the Court of Appeals of the decision in Civil Case No. 117-V, deters this Court from examining further the other conclusions of said courts on the merits of the case, which, after all, are sound and based on law.

The protracted controversy over the estate of Pedro Zaldarriaga has gone through an extraordinary and circuitous route. It is high time the controversy is laid to rest and his descendants allowed to peacefully enjoy the estate in accordance with law.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED. The July 14, 1989 decision of the Court of Appeals in CA-G.R. CV No. 14450 and that of the lower court in Civil Case No. 117-V are AFFIRMED. This decision is immediately executory. Costs against petitioners.

SO ORDERED.

Regalado, Puno and *Mendoza, JJ.*, concur.
Torres, Jr., J., on leave.