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way that PLDT is the owner of those "international long distance calls." Said result is acceptable to me, and I concur therein.

SECOND DIVISION

[G.R. No. 161237. January 14, 2009]

PERFECTO MACABABBAD, JR.,[*] deceased, substituted by his heirs SOPHIA MACABABBAD, GLENN M. MACABABBAD, PERFECTO VENER M. MACABABBAD III AND MARY GRACE MACABABBAD, and SPS. CHUA SENG LIN and SAY UN AY, *petitioners, vs.* **FERNANDO G. MASIRAG, FAUSTINA G. MASIRAG, CORAZON G. MASIRAG, LEONOR G. MASIRAG, and LEONCIO M. GOYAGOY,** *respondents.*

FRANCISCA MASIRAG BACCAY, PURA MASIRAG FERRER-MELAD, and SANTIAGO MASIRAG, *intervenors- respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — A question of law arises when there is doubt as to what the law is on a certain state of facts while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. A question of law may be resolved by the court without reviewing or evaluating the evidence. No examination of the probative value of the evidence would be necessary to resolve a question of law. The opposite is true with respect to questions of fact, which necessitate a calibration of the evidence.

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[*] Macabadbbad is spelled Macabadbad in some pleadings.

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2. ID.; ID.; ID.; ID.; ON THE ISSUE OF PRESCRIPTION. — In *Crisostomo v. Garcia,* this Court ruled that prescription may either be a question of law or fact; it is a question of fact when the doubt or difference arises as to the truth or falsity of an allegation of fact; it is a question of law when there is doubt or controversy as to what the law is on a given state of facts. The test of whether a question is one of law or fact is not the appellation given to the question by the party raising the issue; the test is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence. Prescription, evidently, is a question of fact where there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run.

3. ID.; ID.; SUMMARY DISMISSAL OF COMPLAINT NOT PROPER WHERE FACTUAL ISSUES REQUIRE TRIAL ON THE MERITS.— *Ingjug-Tiro v. Casals* instructively tells us too that a summary or outright dismissal of an action is not proper where there are factual matters in dispute which require presentation and appreciation of evidence. In this cited case whose fact situation is similar to the present case, albeit with a very slight and minor variation, we considered the improvident dismissal of a complaint based on prescription and laches to be improper because of issues that must still be proven by the complaining parties. As in *Ingjug-Tiro,* the present case involves factual issues that require trial on the merits. This situation rules out a summary dismissal of the complaint.

4. ID.; ID.; APPEAL TO THE COURT OF APPEALS; ORDINARY APPEAL; ELUCIDATED. — Since the appeal raised mixed questions of fact and law, no error can be imputed on the respondents for invoking the appellate jurisdiction of the CA through an ordinary appeal. Rule 41, Sec. 2 of the Rules of Court provides: Modes of appeal. (a) Ordinary appeal - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

5. ID.; ID.; APPEAL; THREE MODES OF APPEAL FROM THE DECISION OF THE RTC; CLARIFIED. — In ***Murillo v. Consul***, this Court had the occasion to clarify the three (3) modes of appeal from decisions of the RTC, namely: (1) ordinary appeal

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or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction, covered by Rule 41; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction, covered by Rule 42; and (3) petition for review to the Supreme Court under Rule 45 of the Rules of Court. The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal is elevated to the Supreme Court only on questions of law.

6. ID.; CIVIL PROCEDURE; MOTION TO DISMISS BASED ON PRESCRIPTION HYPOTHETICALLY ADMITS THE ALLEGATIONS RELEVANT AND MATERIAL TO THE RESOLUTION OF THE ISSUE. — A ruling on prescription necessarily requires an analysis of the plaintiff's cause of action based on the allegations of the complaint and the documents attached as its integral parts. A motion to dismiss based on prescription hypothetically admits the allegations relevant and material to the resolution of this issue, but not the other facts of the case.

7. CIVIL LAW; OBLIGATION AND CONTRACTS; VOID AND INEXISTENT CONTRACTS; ACTION FOR DECLARATION OF INEXISTENT CONTRACT DOES NOT PRESCRIBE; APPLICATION OF RULE IN THE NULLITY OF EXTRAJUDICIAL SETTLEMENT OF ESTATE AND SALE IN THE CASE AT BAR.— Respondents' amended complaint sufficiently pleaded a cause to declare the **nullity** of the extrajudicial settlement of estate and sale. Without prejudging the issue of the merits of the respondents' claim and on the assumption that the petitioners already hypothetically admitted the allegations of the complaint when they filed a motion to dismiss based on prescription, the transfer may be null and void if indeed it is established that respondents had not given their consent and that the deed is a forgery or is absolutely fictitious. As the nullity of the extrajudicial settlement of estate and sale has been raised and is the primary issue, the action to secure this result will not prescribe pursuant to Article 1410 of the Civil Code.

8. ID.; ID.; ID.; ID.; ID.; RULE REMAINS IN CASE AT BAR NOTWITHSTANDING THE ISSUANCE OF CERTIFICATES

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OF TITLES.— Does the issuance of the certificates of titles convert the action to one of reconveyance of titled land which, under settled jurisprudence, prescribes in ten (10) years? Precedents say it does not; the action remains imprescriptible, the issuance of the certificates of titles notwithstanding. *Ingjug-Tiro* is again instructive on this point: Article 1458 of the New Civil Code provides: "By the contract of sale one of the contracting parties obligates himself of transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent." It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: "*Nemo dat quod non habet*." **No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents.** Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. **The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of the petitioners' shares produced no legal effects whatsoever**. Similarly, the claim that Francisco Ingjug died in 1963 but appeared to be a party to the *Extrajudicial Settlement and Confirmation of Sale* executed in 1967 would be fatal to the validity of the contract, if proved by clear and convincing evidence. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity. **In actions for reconveyance of the property** predicated on the fact that the

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conveyance complained of was null and void *ab initio*, **a claim of prescription of action would be unavailing. "The action or defense for the declaration of the inexistence of a contract does not prescribe."** Neither could *laches* be invoked in the case at bar. *Laches* is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. *Aequetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil Code; conferring imprescriptibility to actions for declaration of the inexistence of a contract should preempt and prevail over all abstract arguments based only on equity. Certainly, *laches* cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time.

9. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; LACHES; CANNOT BE ESTABLISHED BY MERE ALLEGATIONS IN THE PLEADINGS. — Dismissal based on laches cannot also apply in this case, as it has never reached the presentation of evidence stage and what the RTC had for its consideration were merely the parties' pleadings. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings. Without solid evidentiary basis, laches cannot be a valid ground to dismiss the respondents' complaint.

10. ID.; ID.; PARTIES; MISJOINDER AND NON-JOINDER OF PARTIES, NOT A GROUND FOR DISMISSAL OF ACTION; PROPER REMEDY.— Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor nonjoinder of parties is a ground for the dismissal of an action, thus: Sec. 11. Misjoinder and non-joinder of parties. Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. In *Domingo v. Scheer*, this Court held that the proper remedy when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the

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plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.

11. ID.; ID.; ID.; INDISPENSABLE PARTIES; DEFINED.— Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom no final determination can be had of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights so that the courts cannot proceed without their presence. A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.

12. ID.; ID.; ID.; ID.; FAILURE OF THE COURT OF APPEALS TO RULE ON THE ISSUE DISMISSING THE COMPLAINT FOR FAILURE TO IMPLEAD INDISPENSABLE PARTIES DOES NOT MAKE THE SAME FINAL AND EXECUTORY.— In relation with the conclusion, we see no merit too in the petitioners' argument that the RTC ruling dismissing the complaint on respondents' failure to implead indispensable parties had become final and executory for the CA's failure to rule on the issue. This argument lacks legal basis as nothing in the Rules of Court states that the failure of an appellate court to rule on an issue raised in an appeal renders the appealed order or judgment final and executory with respect to the undiscussed issue. A court need not rule on each and every issue raised, particularly if the issue will not vary the tenor of the Court's ultimate ruling. In the present case, the CA ruling that overshadows all the issues raised is what is stated in the dispositive portion of its decision, *i.e.*, "the order of the lower court dismissing the case is SET ASIDE and the case is remanded for further proceeding."

APPEARANCES OF COUNSEL

Perez and Calagui Law Office for petitioners.
Macpaul B. Soriano Law Offices for respondents.

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D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari* filed by Perfecto Macababbad, Jr.[1] (*Macababbad*) and the spouses Chua Seng Lin (*Chua*) and Say Un Ay (*Say*) (collectively called the *petitioners*), praying that we nullify the Decision[2] of the Court of Appeals (*CA*) and the Resolution[3] denying the motion for reconsideration that followed. The assailed decision reversed the dismissal Order[4] of the Regional Trial Court (*RTC*), Branch 4, Tuguegarao City, Cagayan, remanding the case for further trial.

BACKGROUND

On April 28, 1999, respondents Fernando Masirag (*Fernando*), Faustina Masirag (*Faustina*), Corazon Masirag (*Corazon*), Leonor Masirag (*Leonor*) and Leoncio Masirag Goyagoy (*Leoncio*) (collectively called the *respondents*), filed with the RTC a complaint[5] against Macababbad, Chua and Say.[6] On May 10, 1999, they amended their complaint to allege new matters.[7] The respondents alleged that their complaint is an action for:

quieting of title, nullity of titles, reconveyance, damages and attorney's fees[8] *against the defendants* [petitioners here] x x x *who*

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[1] In view of the death of Macababbad, the Court of Appeals ordered that he be substituted by his legal heirs and representatives Sophia Macababbad, Glenn M. Macababbad, Perfecto Vener M. Macababbad III and Mary Grace Macababbad in its Resolution dated September 20, 2001; see Annex "A" of the Motion for Reconsideration; *rollo*, p. 160.

[2] *Rollo*, pp. 31-39.

[3] *Id.*, pp. 40-41.

[4] *Id.*, pp. 93-94.

[5] Docketed as Civil Case No. 5487; *id.*, pp. 40-41.

[6] The respondents also impleaded the Registry of Deeds of Cagayan as a nominal party being the custodian of all land records.

[7] *Rollo*, pp. 76-93.

[8] *Id.*, pp. 44, 78.

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cabal themselves in mala fides of badges of fraud dishonesty, deceit, misrepresentations, bad faith, under the guise of purported instrument, nomenclature "EXTRA-JUDICIAL SETTLEMENT WITH SIMULTANEOUS SALE OF PORTION OF REGISTERED LAND (Lot 4144)", dated December 3, 1967, a falsification defined and penalized under Art. 172 in relation to Art. 171, Revised Penal Code, by "causing it to appear that persons (the plaintiffs herein [the respondents in this case]*) have participated in any act or proceeding when they (the plaintiffs herein* [the respondents in this case]*) did not in fact so participate" in the "EXTRA-JUDICIAL SETTLEMENT WITH SIMULTANEOUS SALE OF PORTION OF REGISTERED LAND (Lot 4144" – covered by Original Certificate of Title No. 1946)* [sic].[9]

The amended complaint essentially alleged the following:[10]

The deceased spouses Pedro Masirag (*Pedro*) and Pantaleona Tulauan (*Pantaleona*) were the original registered owners of Lot No. 4144 of the Cadastral Survey of Tuguegarao (Lot No. 4144), as evidenced by Original Certificate of Title (OCT) No. 1946.[11] Lot No. 4144 contained an area of 6,423 square meters.

Pedro and Pantaleona had eight (8) children, namely, Valeriano, Domingo, Pablo, Victoria, Vicenta, Inicio, Maxima and Maria. Respondents Fernando, Faustina, Corazon and Leonor Masirag are the children of Valeriano and Alfora Goyagoy, while Leoncio is the son of Vicenta and Braulio Goyagoy. The respondents allegedly did not know of the demise of their respective parents; they only learned of the inheritance due from their parents in the first week of March 1999 when their relative, Pilar Quinto, informed respondent Fernando and his wife Barbara Balisi about it. They immediately hired a lawyer to investigate the matter.

The investigation disclosed that the petitioners falsified a document entitled "Extra-judicial Settlement with Simultaneous

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[9] Underscoring supplied, parenthetical notes ours.

[10] *Rollo*, pp. 76-92.

[11] *Id.,* p. 59.

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Sale of Portion of Registered Land (Lot 4144) dated December 3, 1967"[12] (hereinafter referred to as the *extrajudicial settlement of estate and sale*) so that the respondents were deprived of their shares in Lot No. 4144. The document purportedly bore the respondents' signatures, making them appear to have participated in the execution of the document when they did not; they did not even know the petitioners. The document ostensibly conveyed the subject property to Macababbad for the sum of ₱1,800.00.[13] Subsequently, OCT No. 1946 was cancelled and Lot No. 4144 was registered in the names of its new owners under Transfer Certificate of Title (TCT) No. 13408,[14] presumably after the death of Pedro and Pantaleona. However, despite the supposed sale to Macababbad, his name did not appear on the face of TCT No. 13408.[15] Despite his exclusion from TCT No. 13408, his "Petition for another owner's duplicate copy of TCT No. 13408," filed in the Court of First Instance of Cagayan, was granted on July 27, 1982.[16]

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[12] *Id.,* pp. 60-63.

[13] *Id.,* p. 62.

[14] *Id.,* pp. 64-65.

[15] TCT No. 13408 identified the following owners: CHUA SENG LIN, married to SAY LIN AY - 1/8; GUILLERMO TAMBAUAN; VICTORIA DAYAG, married to FELICIANO TAMBAUAN; ESTEBAN DAYAG, married to LUISITA CATOLIN; IRENE DAYAG, married to ELADIO TUPPIL; MARGARITA DAYAG; GABINA DAYAG, married to GASPAR CARANGMIAN, Jr. - 1/8; PURA GOYAGOY; LUCIA MASIRAG, married to ACKING RONDOLOY; CORAZON MASIRAG, married to FRANCISCO CASIPAG - 1/8; PETRA TUGAD; JUAN MASIRAG, married to LEONILA BAACAY; PEDRO MASIRAG - 1/8; CLARO FERRER; PEDRO FERRER, married to ANGELA CORDON; PURA FERRER, married to DANIEL MELOD - 1/8; BRAULIO GOYAGOY; LEONCIO GOYAGOY, married to ISABEL BADEJOS; PROCOPIO DAYAG; GENOVEVA DAYAG, married to HERMIGILDO CATOLIN; ESTANISLAO DAYAG, married to TEOFISTO STO. TOMAS; MAGNO DAYAG, married to VILMA MARAMAG; ISABEL DAYAG, married to ROGELIO MABBARONG - 1/8; DOMINGO MASIRAG, married to PRIMA DANAN - 1/8.

[16] *Rollo,* pp. 68-69.

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Subsequently, Macababbad registered portions of Lot No. 4144 in his name and sold other portions to third parties.[17]

On May 18, 1972, Chua filed a petition for the cancellation of TCT No. T-13408 and the issuance of a title evidencing his ownership over a subdivided portion of Lot No. 4144 covering 803.50 square meters. On May 23, 1972, TCT No. T-18403 was issued in his name.[18]

Based on these allegations, the respondents asked: (1) that the extrajudicial settlement of estate and sale be declared null and void *ab initio* and without force and effect, and that Chua be ordered and directed to execute the necessary deed of reconveyance of the land; if they refuse, that the Clerk of Court be required to do so; (2) the issuance of a new TCT in respondents' name and the cancellation of Macababbad's and Chua's certificates of title; and (3) that the petitioners be ordered to pay damages and attorney's fees.

Macababbad filed a motion to dismiss the amended complaint on July 14, 1999, while Chua and Say filed an "Appearance with Motion to Dismiss" on September 28, 1999.

On December 14, 1999, the RTC granted the motion of Francisca Masirag Baccay, Pura Masirag Ferrer-Melad, and Santiago Masirag for leave to intervene and to admit their complaint-in-intervention. The motion alleged that they have common inheritance rights with the respondents over the disputed property.

THE RTC RULING

The RTC, after initially denying the motion to dismiss, reconsidered its ruling and **dismissed the complaint** in its Order[19] dated May 29, 2000 **on the grounds that: 1) the**

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[17] For example, the sale of Lot No. 4144-C to Nestor E. Calubaquib, evidenced by a Deed of Sale of a portion of Registered Land, Annex "H" of the Complaint; *id.,* pp. 68-69.

[18] *Id.,* p. 67.

[19] *Id.,* pp. 93-94.

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action, which was filed 32 years after the property was partitioned and after a portion was sold to Macababbad, had already prescribed; and 2) there was failure to implead indispensable parties, namely, the other heirs of Pedro and Pantaleona and the persons who have already acquired title to portions of the subject property in good faith.[20]

The respondents appealed the RTC's order dated May 29, 2000 to the CA on the following grounds:

I.

THE COURT *A QUO* ERRED IN DISMISSING THE CASE

II.

THE COURT *A QUO* ERRED IN INTERPRETING THE NATURE OF APPELLANTS' CAUSE OF ACTION AS THAT DESIGNATED IN THE COMPLAINT'S TITLE AND NOT IN (*SIC)* THE ALLEGATIONS IN THE COMPLAINT[21]

The petitioners moved to dismiss the appeal primarily on the ground that the errors the respondents raised involved pure questions of law that should be brought before the Supreme Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court. The respondents insisted that their appeal involved mixed questions of fact and law and thus fell within the purview of the CA's appellate jurisdiction.

THE CA DECISION[22]

The CA ignored[23] the jurisdictional issue raised by the petitioners in their motion to dismiss, took cognizance of the

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[20] *Id.,* p. 94.

[21] *Id.,* p. 109.

[22] Penned by Justice Mario L. Guarina III, with the concurrence of Justice Martin S. Villarama and Justice Elvi John S. Asuncion.

[23] The CA, in note 10 of its decision stated that "A further consideration has been raised by the appellees to the effect that this appeal should have been brought to the Supreme Court. We note, however, that this issue was already discussed before another Division of our Court through a motion to dismiss appeal and was denied." A perusal of the resolution denying

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appeal, and focused on the following issues: **1) whether the complaint stated a cause of action; and 2) whether the cause of action had been waived, abandoned or extinguished.**

The appellate court reversed and set aside the RTC's dismissal of the complaint. On the *first* issue, it ruled that the complaint "*carve(d) out a sufficient and adequate cause of action xxx. One can read through the verbosity of the initiatory pleading to discern that a fraud was committed by the defendants on certain heirs of the original owners of the property and that, as a result, the plaintiffs were deprived of interests that should have gone to them as successors-in-interest of these parties. A positive deception has been alleged to violate legal rights. This is the ultimate essential fact that remains after all the clutter is removed from the pleading. Directed against the defendants, there is enough to support a definitive adjudication.*"[24]

On the *second* issue, the CA applied the Civil Code provision on implied trust, *i.e.*, that a person who acquires a piece of property through fraud is considered a trustee of an implied trust for the benefit of the person from whom the property came. Reconciling this legal provision with Article 1409 (which defines void contracts) and Article 1410 (which provides that an action to declare a contract null and void is imprescriptible), the CA ruled that the respondents' cause of action had not prescribed, because "*in assailing the extrajudicial partition as void, the [respondents] have the right to bring the action unfettered by a prescriptive period.*"[25]

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the motion to dismiss (*see* Annex "A," Motion for Reconsideration [Re: Resolution dated January 28, 2004]; *rollo*, p. 160) shows that the issue of whether the appeal should have been taken to this court, not the CA, was not discussed.

[24] *Rollo*, p. 35.

[25] *Id.*, p. 38.

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THE PETITION FOR REVIEW ON *CERTIORARI*

The Third Division of this Court initially denied[26] the petition for review on *certiorari* for the petitioners' failure to show any reversible error committed by the CA. However, it subsequently reinstated the petition. In their motion for reconsideration, the petitioners clarified the grounds for their petition, as follows:

A. THE HONORABLE COURT OF APPEALS DID NOT HAVE JURISDICTION TO PASS UPON AND RULE ON THE APPEAL TAKEN BY THE RESPONDENTS IN CA-GR CV NO. 68541.[27]

In the alternative, *ex abundanti cautela*, the petitioners alleged other reversible errors summarized as follows:[28]

- The RTC dismissal on the ground that indispensable parties were not impleaded has already become final and executory because the CA did not pass upon this ground;[29]
- The respondents' argument that there was no failure to implead indispensable parties since the other heirs of Pedro and Pantaleona who were not impleaded were not indispensable parties in light of the respondents' admission that the extra-judicial settlement is valid with respect to the other heirs who sold their shares to Perfecto Macababbad is erroneous because innocent purchasers for value of portions of Lot 4144 who are also indispensable parties were not impleaded;[30]
- The CA erred in reconciling Civil Code provisions Article 1456 and Article 1410, in relation to Article 1409;[31]
- The CA erred in saying that the Extra-judicial Partition was an inexistent and void contract because it could not

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[26] *Id.,* p. 136.

[27] *Id.,* p. 138.

[28] *Id.,* p. 142.

[29] *Id.,* p. 143.

[30] *Ibid.*

[31] *Id.,* p. 147.

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be said that none of the heirs intended to be bound by the contract.[32]

The respondents argued in their Comment that:[33]

- The appeal was brought on mixed questions of fact and law involving prescription, laches and indispensable parties;
- The non-inclusion of indispensable parties is not a ground to dismiss the claim;
- The respondents' action is not for reconveyance. Rather, it is an action to declare the sale of their respective shares null and void;
- An action for the nullity of an instrument prescribes in four (4) years from discovery of the fraud. Discovery was made in 1999, while the complaint was also lodged in 1999. Hence, the action had not yet been barred by prescription;
- *Laches* had not set in because the action was immediately filed after discovery of the fraud.

OUR RULING

We find the petition devoid of merit.

Questions of Fact v. Questions of Law

A question of law arises when there is doubt as to what the law is on a certain state of facts while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[34] A question of law may be resolved by the court without reviewing or evaluating the evidence.[35] No examination of the probative value of the evidence would be necessary to resolve a question of law.[36] The opposite

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[32] *Id.,* p. 148.

[33] *Id.,* pp. 167-170.

[34] *Suarez v. Villarama, Jr.,* G.R. No. 124512, June 27, 2006, 493 SCRA 74.

[35] Regalado, Florenz, D., *Remedial Law Compendium,* Vol. I, 2000 ed., p. 596.

[36] *Ibid.*

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is true with respect to questions of fact, which necessitate a calibration of the evidence.[37]

The nature of the issues to be raised on appeal can be gleaned from the appellant's notice of appeal filed in the trial court and in his or her brief as appellant in the appellate court.[38] In their Notice of Appeal, the respondents manifested their intention to appeal the assailed RTC order on legal grounds and "*on the basis of the environmental facts*."[39] Further, in their Brief, the petitioners argued that the RTC erred in ruling that their cause of action had prescribed and that they had "slept on their rights."[40] All these indicate that questions of facts were involved, or were at least raised, in the respondents' appeal with the CA.

In *Crisostomo v. Garcia*,[41] this Court ruled that prescription may either be a question of law or fact; it is a question of fact when the doubt or difference arises as to the truth or falsity of an allegation of fact; it is a question of law when there is doubt or controversy as to what the law is on a given state of facts. The test of whether a question is one of law or fact is not the appellation given to the question by the party raising the issue; the test is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence. Prescription, evidently, is a question of fact where there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run.[42]

Ingjug-Tiro v. Casals[43] instructively tells us too that a summary or outright dismissal of an action is not proper where there are factual matters in dispute which require presentation

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[37] *Ibid.*, citing *Bernardo v. CA,* 216 SCRA 224 (1992).

[38] *Ibid.*

[39] *Rollo,* pp. 95-96.

[40] *Id.*, pp. 107-112.

[41] G.R. No. 164787, January 31, 2006, 481 SCRA 402.

[42] *Ibid.*

[43] G.R. No. 134718, August 20, 2001, 363 SCRA 435.

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and appreciation of evidence. In this cited case whose fact situation is similar to the present case, albeit with a very slight and minor variation, we considered the improvident dismissal of a complaint based on prescription and laches to be improper because the following must still be proven by the complaining parties:

first, that they were the co-heirs and co-owners of the inherited property; ***second***, that their co-heirs-co-owners sold their hereditary rights thereto without their knowledge and consent; ***third***, that forgery, fraud and deceit were committed in the execution of the *Deed of Extrajudicial Settlement and Confirmation of Sale* since Francisco Ingjug who allegedly executed the deed in 1967 actually died in 1963, hence, the thumbprint found in the document could not be his; ***fourth***, that Eufemio Ingjug who signed the deed of sale is not the son of Mamerto Ingjug, and, therefore, not an heir entitled to participate in the disposition of the inheritance; ***fifth***, that respondents have not paid the taxes since the execution of the sale in 1965 until the present date and the land in question is still declared for taxation purposes in the name of Mamerto Ingjug, the original registered owner, as of 1998; ***sixth***, that respondents had not taken possession of the land subject of the complaint nor introduced any improvement thereon; and ***seventh***, that respondents are not innocent purchasers for value.

As in *Ingjug-Tiro*, the present case involves factual issues that require trial on the merits. This situation rules out a summary dismissal of the complaint.

Proper Mode of Appeal

Since the appeal raised mixed questions of fact and law, no error can be imputed on the respondents for invoking the appellate jurisdiction of the CA through an ordinary appeal. Rule 41, Sec. 2 of the Rules of Court provides:

Modes of appeal.

(a) Ordinary appeal — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

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In ***Murillo v. Consul***,[44] this Court had the occasion to clarify the three (3) modes of appeal from decisions of the RTC, namely: (1) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction, covered by Rule 41; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction, covered by Rule 42; and (3) petition for review to the Supreme Court under Rule 45 of the Rules of Court. The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal is elevated to the Supreme Court only on questions of law.

Prescription

A ruling on prescription necessarily requires an analysis of the plaintiff's cause of action based on the allegations of the complaint and the documents attached as its integral parts. A motion to dismiss based on prescription hypothetically admits the allegations relevant and material to the resolution of this issue, but not the other facts of the case.[45]

Unfortunately, both the respondents' complaint and amended complaint are poorly worded, verbose, and prone to misunderstanding. In addition, therefore, to the complaint, we deem it appropriate to consider the clarifications made in their appeal brief by the petitioners relating to the intent of their complaint. We deem this step appropriate since there were no matters raised for the first time on appeal and their restatement was aptly supported by the allegations of the RTC complaint. The respondents argue in their Appellant's Brief that:

x x x Although reconveyance was mentioned in the title, reconveyance of which connotes that there was a mistake in titling

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[44] *Resolution of the Court En Banc in* UDK-9748 dated March 1, 1990; See also *Macawiwili Gold Mining and Development Co., Inc. v. CA*, G.R. No. 115104, October 12, 1998, 297 SCRA 602.

[45] *Halimao v. Villanueva,* A.M. No. 3825, February 1, 1996, 253 SCRA 1.

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the land in question in the name of the registered owner indicated therein, but in the allegations in the body of the allegations in the body of the instant complaint, it clearly appears that the nature of the cause of action of appellants, [*sic*] they wanted to get back their respective shares in the subject inheritance because they did not sell said shares to appellee Perfecto Macababbad as the signatures purported to be theirs which appeared in the Extrajudicial Settlement with Simultaneo[u]s Sale of Portion of Registered Land (Lot 4144) were forged.

As appellants represented 2 of the 8 children of the deceased original owners of the land in question who were Pedro Masirag and Pantaleona Talauan, the sale is perfectly valid with respect to the other 6 children, and void *ab initio* with respect to the appellants.[46]

The respondents likewise argue that their action is one for the annulment of the *extrajudicial settlement of estate and sale* bearing their forged signatures. They contend that their action had not yet prescribed because an action to declare an instrument null and void is imprescriptible. In their Comment to the petition for review, however, the respondents modified their position and argued that the sale to the petitioners pursuant to the *extrajudicial settlement of estate and sale* was void because it was carried out through fraud; thus, the appropriate prescription period is four (4) years from the discovery of fraud. Under this argument, respondents posit that their cause of action had not yet prescribed because they only learned of the *extrajudicial settlement of estate and sale* in March 1999; they filed their complaint the following month.

The petitioners, on the other hand, argue that the relevant prescriptive period here is ten (10) years from the date of the registration of title, this being an action for reconveyance based on an implied or constructive trust.

We believe and so hold that the respondents' amended complaint sufficiently pleaded a cause to declare the **nullity** of the extrajudicial settlement of estate and sale, as they claimed in their amended complaint. Without prejudging the issue of the

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[46] *Rollo,* p. 110.

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merits of the respondents' claim and on the assumption that the petitioners already hypothetically admitted the allegations of the complaint when they filed a motion to dismiss based on prescription, the transfer may be null and void if indeed it is established that respondents had not given their consent and that the deed is a forgery or is absolutely fictitious. As the nullity of the extrajudicial settlement of estate and sale has been raised and is the primary issue, the action to secure this result will not prescribe pursuant to Article 1410 of the Civil Code.

Based on this conclusion, the necessary question that next arises is: What then is the effect of the issuance of TCTs in the name of petitioners? In other words, does the issuance of the certificates of titles convert the action to one of reconveyance of titled land which, under settled jurisprudence, prescribes in ten (10) years?

Precedents say it does not; the action remains imprescriptible, the issuance of the certificates of titles notwithstanding. *Ingjug-Tiro* is again instructive on this point:

> Article 1458 of the New Civil Code provides: "By the contract of sale one of the contracting parties obligates himself of transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent." It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: "*Nemo dat quod non habet*." **No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents**.
>
> Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. **The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of the petitioners' shares produced no legal effects whatsoever**.

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Similarly, the claim that Francisco Ingjug died in 1963 but appeared to be a party to the *Extrajudicial Settlement and Confirmation of Sale* executed in 1967 would be fatal to the validity of the contract, if proved by clear and convincing evidence. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity.

In actions for reconveyance of the property predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be unavailing. "The action or defense for the declaration of the inexistence of a contract does not prescribe." Neither could *laches* be invoked in the case at bar. *Laches* is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. *Aequetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil; Code conferring imprescriptibility to actions for declaration of the inexistence of a contract should preempt and prevail over all abstract arguments based only on equity. Certainly, *laches* cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time.[47]

We have a similar ruling in *Heirs of Rosa Dumaliang v. Serban*[48]

The respondents' action is therefore imprescriptible and the CA committed no reversible error in so ruling.

Laches

Dismissal based on laches cannot also apply in this case, as it has never reached the presentation of evidence stage and what the RTC had for its consideration were merely the parties'

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[47] *Supra* note 43. Underscoring supplied.

[48] G.R. No. 155133, February 21, 2007, 516 SCRA 343.

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pleadings. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings.[49] Without solid evidentiary basis, laches cannot be a valid ground to dismiss the respondents' complaint.

Non-joinder of Indispensable parties is not a Ground for a Motion to Dismiss

The RTC dismissed the respondents' amended complaint because indispensable parties were not impleaded. The respondents argue that since the *extrajudicial settlement of estate and sale* was valid with respect to the other heirs who executed it, those heirs are not indispensable parties in this case. Innocent purchasers for value to whom title has passed from Macababbad and the spouses Chua and Say are likewise not indispensable parties since the titles sought to be recovered here are still under the name of the petitioners.

We also find the RTC dismissal Order on this ground erroneous.

Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor nonjoinder of parties is a ground for the dismissal of an action, thus:

> Sec. 11. Misjoinder and non-joinder of parties. Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

In *Domingo v. Scheer*,[50] this Court held that the proper remedy when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party

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[49] *Abadiano v. Spouses Martir,* G.R. No. 156310, July 31, 2008.

[50] G.R. No. 154745, January 29, 2004, 421 SCRA 468.

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is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion.[51] Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.[52]

Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom no final determination can be had of an action.[53] They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights so that the courts cannot proceed without their presence.[54] A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.[55]

In an action for reconveyance, all the owners of the property sought to be recovered are indispensable parties. Thus, if reconveyance were the only relief prayed for, impleading petitioners Macababbad and the spouses Chua and Say would suffice. On the other hand, under the claim that the action is for the declaration of the nullity of *extrajudicial settlement of estate and sale,* all of the parties who executed the same should be impleaded for a complete resolution of the case. This case, however, is not without its twist on the issue of impleading indispensable parties as the RTC never issued an order directing their inclusion. Under this legal situation, particularly in light of Rule 3, Section 11 of the Rules of Court, there can be no basis for the immediate dismissal of the action.

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[51] RULES OF COURT, Rule 17, Sec. 3.

[52] *Cortez v. Avila*, 101 Phil. 205 (1957).

[53] *Uy v. Court of Appeals*, G.R. No. 157065, July 11, 2006, 494 SCRA 535.

[54] *Seno v. Mangubat*, G.R. No. L-44339, December 2, 1987, 156 SCRA 113.

[55] *Uy v. Court of Appeals, supra* note 53.

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In relation with this conclusion, we see no merit too in the petitioners' argument that the RTC ruling dismissing the complaint on respondents' failure to implead indispensable parties had become final and executory for the CA's failure to rule on the issue. This argument lacks legal basis as nothing in the Rules of Court states that the failure of an appellate court to rule on an issue raised in an appeal renders the appealed order or judgment final and executory with respect to the undiscussed issue. A court need not rule on each and every issue raised,[56] particularly if the issue will not vary the tenor of the Court's ultimate ruling. In the present case, the CA ruling that overshadows all the issues raised is what is stated in the dispositive portion of its decision, *i.e.*, "the order of the lower court dismissing the case is SET ASIDE and the case is remanded for further proceeding."

In sum, the CA correctly reversed the RTC dismissal of the respondents' complaint.

WHEREFORE, premises considered, we *DENY* the petition for review for lack of merit.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[56] See *Novino v. Court of Appeals*, G.R. No. L-21098, May 31, 1963, 8 SCRA 279.