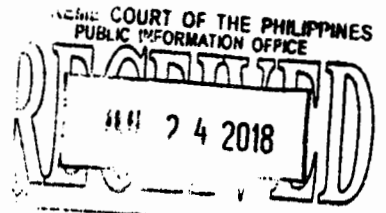




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

MATEO ENCARNACION
 (Deceased), substituted by his heirs,
 namely: **ELSA DEPLIAN-ENCARNACION, KRIZZA MARIE D. ENCARNACION, LORETA ENCARNACION, CARMELITA E. STADERMAN, CORAZON S. ENCARNACION, RIZALINA ENCARNACION-PARONG, VICTORIA ENCARNACION-DULA, MARIA HELEN ENCARNACION-DAY, TERESITA ENCARNACION-MANALANG, GEORGE ENCARNACION, MARY MITCHIE E. EDWARDSON, ERNESTO ENCARNACION, MATEO ENCARNACION, JR., and GRACE WAGNER,**

G.R. No. 192285

Petitioners,

Present:
LEONARDO-DE CASTRO,
*Acting Chairperson**
DEL CASTILLO,
JARDELEZA,
TIJAM, and
GESMUNDO, JJ.**

- versus -

THOMAS JOHNSON,

Respondent.

Promulgated:

JUL 11 2018

x-----x

DECISION

JARDELEZA, J.:

This is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court seeking to nullify the Court of Appeals' (CA) August 12, 2009 Decision² and May 13, 2010 Resolution³ in CA-G.R. SP No. 100483. The CA

* Designated as Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

** Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

¹ *Rollo*, pp. 9-45.

² *Id.* at 46-63; penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Portia Aliño-Hornachuelos and Fernanda Lampas-Peralta.

³ *Id.* at 72-73.

denied the petition for annulment of judgment filed by Mateo Encarnacion (Mateo) against the February 17, 2005 Order⁴ of Branch 72 of the Regional Trial Court (RTC) of Olongapo City in Civil Case No. 110-0-2003. The RTC granted Thomas Johnson's (respondent) prayer to further amend the amended writ of execution in his action for recognition and enforcement of foreign judgment.

On October 6, 2000, respondent filed an action for breach of contract with prayer for damages and costs against spouses Narvin Edwardson (Narvin) and Mary Mitchie Edwardson (also known as Mary Encarnacion; hereinafter shall be referred to as Mary), Mateo's daughter, before the Vancouver Registry of the Supreme Court of British Columbia, Canada. Respondent alleged that Narvin and Mary convinced him to invest his money and personal property in a vehicle leasing company owned by the couple, which turned out to be a fraudulent business scheme. The couple neither deposited the promised profits into his account nor gave an accounting or explanation as to where his funds went.⁵

The Supreme Court of British Columbia gave due course to respondent's action and ordered summons to be served upon Narvin and Mary. While service of summons was being attempted, respondent moved that the Supreme Court of British Columbia grant him a Mareva injunction, with *ex juris affect*, to restrain Narvin and Mary from dealing with any of their assets except as is necessary for payment of ordinary living expenses or to carry on their ordinary business.⁶ On October 6, 2000, the Supreme Court of British Columbia issued a Mareva injunction⁷ and authorized respondent, among others, to obtain orders in foreign jurisdictions which would permit its enforcement in those jurisdictions.

On February 26, 2001, the Supreme Court of British Columbia issued a Default Judgment⁸ finding Narvin and Mary liable to respondent in the amount of C\$380,431.00 with interest in the amount of C\$18,385.56, C\$1,198.04 as cost, and for damages to be determined. On June 29, 2001, it

⁴ *Id.* at 105.

⁵ *Id.* at 47, 75-77.

⁶ See *CA rollo*, pp. 62-66.


⁷ *Id.* at 69-84.

⁸ *Id.* at 115-116. The full dispositive portion of which reads:

The Defendants, Narvin Edwardson also known as Narvin Wray Clarence Edwardson and Mary Mi[t]chie Edwardson also known as Mary Mi[t]chie Encarnacion, not having filed an Appearance to the Writ of Summons and Statement of Claim in this action and the time for doing so having expired.

THIS COURT ORDERS that the Defendant, Narvin Edwardson also known as Narvin Wray Clarence Edwardson, pay to the Plaintiff the sum of [C]\$380,431.00 together with interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996 c. 79 in the sum of [C]\$18,385.56 and [C]\$1198.04 costs.

THIS COURT FURTHER ORDERS that the Defendants, Narvin Edwardson also known as Narvin Wray Clarence Edwardson and Mary Mi[t]chie Edwardson also known as Mary Mi[t]chie Encarnacion, pay to the Plaintiff damages to be assessed, and costs to be assessed.



ordered Narvin and Mary to each pay respondent the sum of C\$25,000.00 as aggravated damages.⁹

On February 24, 2003, respondent filed an action for recognition and enforcement of foreign judgment with prayer for the recognition of the Mareva injunction¹⁰ with Branch 72 of the RTC of Olongapo City, docketed as Civil Case No. 110-0-2003. Respondent also simultaneously petitioned to be allowed to litigate as a pauper litigant.¹¹ On February 27, 2003, the RTC granted his petition on the condition that a lien of ₱123,161.00, representing the amount of the filing fees, would be imposed upon him in the event of a favorable judgment.¹²

On March 5, 2003, the RTC issued an Order¹³ restraining Narvin and Mary from disposing or encumbering their assets, as well as those belonging to, or controlled by, the Zambales-Canada Foundation, the 5-E Foundation, and those belonging to Mateo (for being properties transferred in fraud of creditors). On May 12, 2003, the RTC ordered the Register of Deeds of Zambales and the Provincial Assessor to annotate its March 5, 2003 Order on the titles and tax declarations of all properties owned by Narvin and Mary, as well as those belonging to Mateo.¹⁴ Thereafter, the RTC ordered the service of summonses by publication upon Narvin and Mary.¹⁵ Despite publication, Narvin and Mary still failed to file their answer. Accordingly, on December 1, 2003, the RTC declared them in default, and subsequently rendered a judgment in default in accordance with the judgment of the Supreme Court of British Columbia.¹⁶

On March 30, 2004, the RTC issued a Writ of Execution¹⁷ authorizing the sheriff to attach sufficient properties belonging to Narvin and Mary to satisfy the judgment award. On August 3, 2004, the RTC, acting on respondent's motion to modify the Writ of Execution (to include in the writ the properties under the name of Mateo whose title and tax declarations were previously annotated), modified the Writ of Execution.¹⁸ It issued an Amended Writ of Execution¹⁹ on September 9, 2004 authorizing the sheriff to include the properties registered in the name of Mateo as subject of the execution.

Subsequently, 13 levied properties not covered by certificates of title were sold in public auction on June 23, 2004, wherein respondent placed the

⁹ *Id.* at 119-120.

¹⁰ *Rollo*, pp. 74-91.

¹¹ *Id.* at 92-94.

¹² *CA rollo*, p. 158.

¹³ *Id.* at 148-149.

¹⁴ *Id.* at 150.

¹⁵ *Rollo*, p. 53.

¹⁶ *Id.* at 103.

¹⁷ *CA rollo*, pp. 153-154.

¹⁸ *Id.* at 155.

¹⁹ *Id.* at 156-157.

highest bid of ₱10,000,000.00.²⁰ The properties listed in the Certificate of Sale²¹ were: (1) a coco/agricultural land covered by Tax Declaration No. 016-0322A in the name of “Mary Mitchie Encarnacion;” and (2) a commercial/agricultural land covered by Tax Declaration No. 007-0410AR in the name of “Mary Mitchie E. Edwardson.”

On January 11, 2005, respondent filed a motion for clarificatory order²² seeking further amendment of the writ of execution to expressly authorize the levy of the properties in the name of Mateo whose title and tax declarations were previously annotated with the March 30, 2004 Order.

Subsequently, Mateo filed an Affidavit of Third Party Claim²³ dated January 17, 2005 before the RTC, which was noted on January 20, 2005,²⁴ claiming that he is the owner of 14 parcels of land which were being levied. The records, however, are not clear as to what action was taken by the RTC on Mateo’s third party claim.²⁵

In its February 17, 2005 Order,²⁶ the RTC, acting on respondent’s motion for clarificatory order, further amended the Writ of Execution as follows:

“x x x

“AND FURTHER ORDERS to levy the properties registered under the name of Mateo Encarnacion which was previously annotated in the Assessors Office and the Register of Deeds of Iba, Zambales, shall be the subject of the same under execution.”

On September 10, 2007, or more than two years after the February 17, 2005 Order was issued, Mateo filed a petition for annulment of judgment²⁷ before the CA (CA-G.R. SP No. 100483). He alleged that he is the owner of 18 properties levied in Civil Case No. 110-0-2003; that he was not made a party to the case; and that the inclusion of his properties in the levy and execution sale were made without notice to him.²⁸ Mateo, nonetheless, admitted before the CA that he has no standing to question the proceedings on the action for recognition and enforcement of judgment. He asserts that he is only questioning the February 17, 2005 Order which deprived him of his properties.²⁹

²⁰ *Rollo*, pp. 54-55.

²¹ *CA rollo*, pp. 229-230.

²² *Id.* at 231-233. See also records, pp. 215-217.

²³ *Rollo*, p. 110.

²⁴ See *CA rollo*, p. 159.

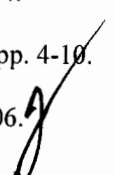
²⁵ *Rollo*, p. 54.

²⁶ *Id.* at 105.

²⁷ *CA rollo*, pp. 4-10.

²⁸ *Id.* at 5-7.

²⁹ *Id.* at 7, 306.



In his answer,³⁰ respondent countered that the tax declarations under Mateo's name cannot be invoked as a legal basis to claim ownership over the properties. According to respondent, Mateo fraudulently caused the issuance of these tax declarations under his name—they were effected after the issuance of the March 5, 2003 Order and the execution sale on July 23, 2004.³¹ Respondent also averred that the RTC conducted an investigation and had already excluded from the levy certain properties which undisputedly belonged to Mateo.³²

Meanwhile, another sale in Civil Case No. 110-0-2003 resulted in a Certificate of Sale³³ dated November 29, 2006 in favor of respondent, covering the properties covered by the following: (1) Original Certificate of Title (OCT) No. P-9496; (2) Tax Declaration No. 016-0324AR; (3) OCT No. P-9498; (4) OCT No. P-9336; (5) OCT No. P-9421; (6) OCT No. P-9508; and (7) Tax Declaration No. 016-0845. Respondent was the highest bidder for these properties in the total amount of ₱4,000,000.00. On November 3, 2008, the RTC issued an Order³⁴ granting the motion for consolidation of title filed by respondent over the properties subject of the Certificates of Sale.

During the pendency of the proceedings before the CA, Mateo died and was substituted by his heirs (petitioners), including his daughter Mary.³⁵ In their Memorandum³⁶ dated January 12, 2009, petitioners amended their argument to aver that all the proceedings in Civil Case No. 110-0-2003 should be annulled on the ground of lack of jurisdiction and extrinsic fraud.³⁷

On August 12, 2009, the CA denied the petition.³⁸ It upheld the jurisdiction of the RTC over the action of recognition of foreign judgment. By filing an Affidavit of Third Party Claim, Mateo was deemed to have voluntarily submitted himself to the jurisdiction of the RTC.³⁹ It also ruled that the remedy of annulment of judgment is not proper because the February 17, 2005 Order is not a final order as it merely seeks to clarify the RTC's further amended writ of execution; the proper remedy is to move to quash the writ of execution and if unsuccessful, to file a petition for *certiorari* under Rule 65 of the Rules of Court.⁴⁰ The CA also said that even if procedural rules were relaxed, the petition would still fail because it has already been barred by estoppel and laches due to Mateo's delay in filing the petition despite numerous opportunities to do so.⁴¹ Lastly, the CA pointed out that Mateo is

³⁰ *Id.* at 181-224.

³¹ *Id.* at 359-360.

³² *Id.* at 185-186.

³³ *Rollo*, pp. 111-114.

³⁴ *CA rollo*, pp. 392-394.

³⁵ *Id.* at 290-292.

³⁶ *Id.* at 402-426.

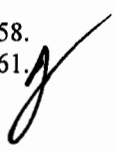
³⁷ *Id.* at 403 & 425.

³⁸ *Rollo*, p. 62.

³⁹ *Id.* at 56.

⁴⁰ *Id.* at 57-58.

⁴¹ *Id.* at 58-61.



not the proper party to file the petition, as he had already transferred the properties to Mary by virtue of a deed of quitclaim on February 27, 1995.⁴²

On May 13, 2010, the CA denied petitioners' motion for reconsideration.⁴³ Hence, this petition.

Petitioners reiterate their arguments before the CA that the whole proceedings in Civil Case No. 110-0-2003 be annulled on grounds of lack of jurisdiction and extrinsic fraud because the RTC: (1) allowed respondent to sue as an indigent party when he is willing and able to put up a bond that may be required by the court; (2) allowed a complaint with a grossly defective certification against forum shopping; (3) allowed service of summons by publication in an action *in personam* and exercised jurisdiction on that basis; (4) recognized a global injunction issued by a foreign court as a writ of attachment; (5) promulgated a final order without requiring the presentation of evidence, even *ex parte*, and without distinctly stating the facts and the law on which it is based; (6) allowed the levy on execution of properties belonging to a party who was not named as defendant in the civil action; and (7) allowed the sale and delivery of the properties to a foreigner who is disqualified from owning private lands under the Constitution.⁴⁴

The issues presented are:

- I. Whether an action for annulment of judgment is the proper remedy of a third-party claimant of properties levied and sold under execution sale; and
- II. Whether respondent, an alien, may own private lands by virtue of an execution sale.

We deny the petition. Nevertheless, we nullify the sale of the private lands to respondent for being a flagrant violation of Section 7, Article XII of the Constitution.

I

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.⁴⁵ The ultimate objective of the remedy is "to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense."⁴⁶ The remedy is provided by Section 1 of Rule 47 of the Rules of Court:

⁴² *Id.* at 61.

⁴³ *Id.* at 73.

⁴⁴ *Id.* at 20-42.

⁴⁵ See *Galang v. Court of Appeals*, G.R. No. 139448, October 11, 2005, 472 SCRA 259, 269. Citation omitted.

⁴⁶ *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*, G.R. No. 159926,

Sec. 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.

In *Dare Adventure Farm Corporation v. Court of Appeals*,⁴⁷ we explained the nature of the remedy, to wit:

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts.⁴⁸ x x x (Citations omitted.)


In *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*,⁴⁹ we said that owing to the extraordinary nature and objective of the remedy of annulment of judgment or final order, there are requirements that must be complied with before the remedy is granted. *First*, the remedy is only available when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief, or other appropriate remedies through no fault of the petitioner. *Second*, the ground for the remedy is limited to either extrinsic fraud or lack of jurisdiction (although lack of due process has been cited as a ground by jurisprudence). *Third*, the time for availing the remedy is set by the rules: if based on extrinsic fraud, it must be filed within four years from the discovery of extrinsic fraud; if based on lack of jurisdiction, it must be brought before it is barred by laches or estoppel.

January 20, 2014, 714 SCRA 226, 241.

⁴⁷ G.R. No. 161122, September 24, 2012, 681 SCRA 580.

⁴⁸ *Id.* at 586-587.

⁴⁹ *Supra.*



Fourth, the petition should be verified and should allege with particularity the facts and law relied upon, and those supporting the petitioner's good and substantial cause of action or defense.⁵⁰

Petitioners failed to show their standing to file the petition. They have also failed to comply with the first requirement.

a.

The proper party to file a petition for annulment of judgment or final order need not be a party to the judgment sought to be annulled. Nevertheless, it is essential that he is able to prove by preponderance of evidence that he is adversely affected by the judgment.⁵¹ A person not adversely affected by a decision in the civil action or proceeding cannot bring an action for annulment of judgment under Rule 47 of the Rules of Court. The exception is if he is a successor in interest by title subsequent to the commencement of the action, or if the action or proceeding is *in rem*, in which case the judgment is binding against him.⁵²

In *Bulawan v. Aquende*,⁵³ we held that assuming that the petitioner is not an indispensable party to the case that is being annulled, he may still file for a petition for annulment of judgment. Our basic ruling is that “[w]hat is essential is that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and that he would be adversely affected thereby.”⁵⁴

Here, the action sought to be annulled is a recognition of foreign judgment in a collection case rendered by the Supreme Court of British Columbia filed by respondent against Narvin and Mary. Under Section 48(b), Rule 39 of the Rules of Court, a foreign judgment or final order against a person creates a “presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.” We have previously held that Philippine courts exercise limited review on foreign judgments and are not allowed to delve into its merits. Thus, the action for recognition of foreign judgment does not require the relitigation of the case under a Philippine court.⁵⁵ Once admitted and proven in a Philippine court, a foreign judgment can only be repelled by the *parties* and *their successors in interest by subsequent title* on grounds external to its merits, *i.e.*, “want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.”⁵⁶ Consequently, the right being enforced in the action is the subject of the

⁵⁰ *Id.* at 241-247.

⁵¹ *Islamic Da'Wah Council of the Phils. v. Court of Appeals*, G.R. No. 80892, September 29, 1989, 178 SCRA 178, 186.

⁵² *Dare Adventure Farm Corporation v. Court of Appeals*, *supra* note 47 at 583.

⁵³ G.R. No. 182819, June 22, 2011, 652 SCRA 585.

⁵⁴ *Id.* at 597-598. Citation omitted.

⁵⁵ See *Fujiki v. Marinay*, G.R. No. 196049, June 26, 2013, 700 SCRA 69, 91-92.

⁵⁶ RULES OF COURT, Rule 39, Sec. 48.

collection case, which is a personal one against the couple and their successors in interest.

Considering the foregoing, Mateo is not a party who could be adversely affected by the outcome of Civil Case No. 110-0-2003. To begin with, he was not an indispensable party to the action for recognition whose interest in the controversy is such that a final decree will necessarily affect his rights, as he was not the judgment debtor in the action.⁵⁷ Neither is Mateo a real party in interest⁵⁸ in Civil Case No. 110-0-2003, as aptly noted by the CA, having already transferred his interest in the properties to Mary. Lastly, he is not a successor in interest of Narvin and Mary.

Further, since the ultimate objective of the remedy is to grant the petitioner an opportunity to prosecute his cause or ventilate his defense,⁵⁹ granting the petition for annulment of judgment would not give Mateo or petitioners available defenses that he originally did not possess. Mateo and petitioners were affected only in as far as the alleged properties of Mateo were levied and sold at the public auction—which came **after** the judgment in Civil Case No. 110-0-2003. Mateo himself admitted this when he initially filed the petition.⁶⁰ Therefore, Mateo and his heirs cannot raise the alleged irregularities in the action for recognition of foreign judgment; he may only question the propriety of the levy and sale of their alleged properties.

Petitioners' arguments show that the very relief they are claiming is one against the alleged wrongful execution of the decision (which resulted in the levy and sale of the properties allegedly belonging to Mateo), and not the decision itself. It is apparent that had the judgment not been executed against the properties they are claiming, they would not be seeking to annul the judgment in Civil Case No. 110-0-2003. However, any alleged irregular implementation of a writ of execution (or resulting levy) cannot be corrected through the equitable relief of annulment of judgment; the remedy lies elsewhere.⁶¹

b.

In this regard, there is another reason that militates against petitioners. The remedy of annulment of judgment is a remedy in equity so exceptional in nature that it may only be availed of when the ordinary or other appropriate remedies provided by law are wanting *without fault or neglect* on the

⁵⁷ See RULES OF COURT, Rule 3, Sec. 7 and *Gochan v. Mancao*, G.R. No. 182314, November 13, 2013, 709 SCRA 438, 457-458.

⁵⁸ RULES OF COURT, Rule 3, Sec. 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

⁵⁹ *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*, *supra* note 46 at 241.

⁶⁰ CA *rollo*, pp. 7, 306.

⁶¹ See *Galang v. Court of Appeals*, *supra* note 45 at 272-273.



petitioner's part.⁶² It is a condition *sine qua non* that one must have availed of the proper remedies before resorting to the action for annulment of judgment.⁶³

We note that the ordinary remedies of new trial, appeal, and petition for relief were not available to Mateo for the reason that he was not a party to Civil Case No. 110-0-2003. Mateo was neither able to participate in the original proceedings nor resort to the other remedies because he was not a real party in interest or an indispensable party thereto. There are, however, other appropriate remedies available to him that he could have resorted to.

Section 16, Rule 39 of the Rules of Court provides for the remedies of a third-party claimant of an alleged wrongfully levied property:

Sec. 16. Proceedings where property claimed by third person. – If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

x x x x

Based on this section, a third-party claimant has the following cumulative remedies: (a) he may avail of "*terceria*" by serving on the levying officer making the levy an affidavit of his title, and serving also a copy to the judgment creditor; (b) he may file a case for damages against the bond issued

⁶² *Republic v. De Castro*, G.R. No. 189724, February 7, 2011, 641 SCRA 584, 588-589.

⁶³ *Id.* at 589-590, citing *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*, G.R. No. 139895, August 15, 2003, 409 SCRA 186, 191-192.

by the judgment debtor within 120 days from the date of the filing of the bond; and (c) he may file “any proper action” to vindicate his claim to the property.⁶⁴

In *Sy v. Discaya*,⁶⁵ and later in *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Maunlad Homes, Inc.*,⁶⁶ we recognized the right of a third-party claimant to file an independent action to vindicate his claim of ownership over the properties seized under Section 16, Rule 39 of the Rules of Court. As we pointed out in *Sy*, a “proper action” is entirely “distinct and separate from that in which the judgment is being enforced, with the court of competent jurisdiction.” Such a “proper action” may have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages from the allegedly wrongful seizure and detention of the property. This determination of ownership is not the proper subject of an action for annulment of judgment.⁶⁷

In this case, the proper recourse for petitioners is to vindicate and prove their ownership over the properties in a separate action as allowed under Section 16, Rule 39 of the Rules of Court. This is the more prudent action since respondent also asserts that the properties claimed were owned by Mary, and the CA upheld such assertion. At this juncture, we note that if we grant the petition, we would be nullifying the whole proceeding in Civil Case No. 110-0-2003 which is more than what is necessary to address the remedy being sought by petitioners.

II

While mindful of our ruling that petitioners cannot file the petition for annulment of judgment, we nevertheless cannot turn a blind eye to the blatant violation of the Constitution’s prohibition on foreign ownership of lands. This violation was committed when respondent was allowed to participate in the public auction sales where, as highest bidder, he acquired land.

Section 7, Article XII of the Constitution states:

Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The fundamental law is clear that aliens, whether individuals or corporations, are disqualified from acquiring lands of the public domain.⁶⁸ The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least 60% of the capital of which is owned

⁶⁴ See *Sy v. Discaya*, G.R. No. 86301, January 23, 1990, 181 SCRA 378, 382-384.

⁶⁵ *Supra*.

⁶⁶ G.R. No. 215933, February 8, 2017, 817 SCRA 278, 287-288.

⁶⁷ *Sy v. Discaya*, *supra* at 383-384

⁶⁸ *Matthews v. Taylor*, G.R. No. 164584, June 22, 2009, 590 SCRA 394, 401, citing *Muller v. Muller*, G.R. No. 149615, August 29, 2006, 500 SCRA 65, 71

by Filipinos.⁶⁹ Consequently, they are also disqualified from acquiring private lands.

In *Matthews v. Taylor*,⁷⁰ we took cognizance of the violation of the Constitutional prohibition on alien land ownership despite the failure of the trial and appellate courts to consider and apply these constitutional principles. There we said, “[t]he trial and appellate courts both focused on the property relations of petitioner and respondent in light of the Civil Code and Family Code provisions. They, however, failed to observe the applicable constitutional principles, which, in fact, are the more decisive.”⁷¹ We said further:

The rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional prohibition, as more and more aliens attempt to circumvent the provision by trying to own lands through another. **In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision.** We had cases where aliens wanted that a particular property be declared as part of their father’s estate; that they be reimbursed the funds used in purchasing a property titled in the name of another; that an implied trust be declared in their (aliens’) favor; and that a contract of sale be nullified for their lack of consent.


In *Ting Ho, Jr. v. Teng Gui*, Felix Ting Ho, a Chinese citizen, acquired a parcel of land, together with the improvements thereon. Upon his death, his heirs (the petitioners therein) claimed the properties as part of the estate of their deceased father, and sought the partition of said properties among themselves. We, however, excluded the land and improvements thereon from the estate of Felix Ting Ho, precisely because he never became the owner thereof in light of the above-mentioned constitutional prohibition.

In *Muller v. Muller*, petitioner Elena Buenaventura Muller and respondent Helmut Muller were married in Germany. During the subsistence of their marriage, respondent purchased a parcel of land in Antipolo City and constructed a house thereon. The Antipolo property was registered in the name of the petitioner. They eventually separated, prompting the respondent to file a petition for separation of property. Specifically, respondent prayed for reimbursement of the funds he paid for the acquisition of said property. In deciding the case in favor of the petitioner, the Court held that respondent was aware that as an alien, he was prohibited from owning a parcel of land situated in the

⁶⁹ *Id.*, citing *Ting Ho, Jr. v. Teng Gui*, G.R. No. 130115, July 16, 2008, 558 SCRA 421.

⁷⁰ *Supra* note 68 at 400-405.

⁷¹ *Id.* at 400.



Philippines. He had, in fact, declared that when the spouses acquired the Antipolo property, he had it titled in the name of the petitioner because of said prohibition. Hence, we denied his attempt at subsequently asserting a right to the said property in the form of a claim for reimbursement. Neither did the Court declare that an implied trust was created by operation of law in view of petitioner's marriage to respondent. We said that to rule otherwise would permit circumvention of the constitutional prohibition.

In *Frenzel v. Catito*, petitioner, an Australian citizen, was married to Teresita Santos; while respondent, a Filipina, was married to Klaus Muller. Petitioner and respondent met and later cohabited in a common-law relationship, during which petitioner acquired real properties; and since he was disqualified from owning lands in the Philippines, respondent's name appeared as the vendee in the deeds of sale. When their relationship turned sour, petitioner filed an action for the recovery of the real properties registered in the name of respondent, claiming that he was the real owner. Again, as in the other cases, the Court refused to declare petitioner as the owner mainly because of the constitutional prohibition. The Court added that being a party to an illegal contract, he could not come to court and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in an illegal contract may not maintain an action for his losses.

Finally, in *Cheesman v. Intermediate Appellate Court*, petitioner (an American citizen) and Criselda Cheesman acquired a parcel of land that was later registered in the latter's name. Criselda subsequently sold the land to a third person without the knowledge of the petitioner. The petitioner then sought the nullification of the sale as he did not give his consent thereto. The Court held that assuming that it was his (petitioner's) intention that the lot in question be purchased by him and his wife, he acquired no right whatever over the property by virtue of that purchase; and in attempting to acquire a right or interest in land, vicariously and clandestinely, he knowingly violated the Constitution; thus, the sale as to him was null and void.⁷² (Emphasis supplied; citations omitted.)

Also in *Hulst v. PR Builders, Inc.*,⁷³ we said that “[b]efore resolving the question [of] whether the CA erred in affirming the Order of the [Housing and Land Use Regulatory Board (HLURB)] setting aside the levy made by the sheriff, it behooves this Court to address **a matter of public and national importance** which completely escaped the attention of the HLURB Arbiter and the CA: petitioner and his wife are foreign nationals who are disqualified under the Constitution from owning real property in their names.”⁷⁴ There, Hulst, a Dutch national, won an action for rescission of a contract to sell over

⁷² *Id.* at 402-405.

⁷³ G.R. No. 156364, September 3, 2007, 532 SCRA 74.

⁷⁴ *Id.* at 89. Emphasis supplied.


a 210-square meter townhouse against the developer in the HLURB. The HLURB ordered reimbursement of the contract price to Hulst. Subsequently, the sheriff levied real properties owned by the developer. The developer filed a motion to quash the writ of levy on the ground of over-levy of properties, which the HLURB Arbiter granted. While the issue before the CA, and successively before us, was whether the HLURB Arbiters erred in setting aside the levy, we took cognizance of the violation of the Constitution that escaped both the HLURB and the CA. We declared that the contract to sell was void.

In this case, it is undisputed that respondent is a Canadian citizen.⁷⁵ Respondent neither denied this, nor alleged that he became a Filipino citizen. Being an alien, he is absolutely prohibited from acquiring private and public lands in the Philippines. Concomitantly, respondent is also prohibited from participating in the execution sale, which has for its object, the transfer of ownership and title of property to the highest bidder. What cannot be legally done directly cannot be done indirectly.

In light of this, we nullify the auction sales conducted on June 23, 2004 and November 29, 2006 where respondent was declared the highest bidder, as well as the proceedings which led to the acquisition of ownership by respondent over the lands involved. Article 1409(1) and (7) of the Civil Code states that all contracts whose cause, object, or purpose is contrary to law or public policy, and those expressly prohibited or declared void by law are inexistent and void from the beginning. We thus remand the case back to Branch 72 of the RTC of Olongapo City, to conduct anew the auction sale of the levied properties, and to exclude respondent from participating as bidder.

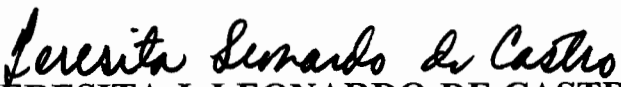
WHEREFORE, the petition is **DENIED**. Nevertheless, the public auction sales conducted on June 23, 2004 and November 29, 2006 in Civil Case No. 110-0-2003, and the proceedings which resulted therefrom, are **NULLIFIED** for being contrary to Section 7, Article XII of the Constitution. Branch 72 of the Regional Trial Court of Olongapo City, in Civil Case No. 110-0-2003, is directed: (1) to proceed with the execution of the Decision dated December 1, 2003; (2) to exclude respondent Thomas Johnson from participating in any public auction sale of lands in said case; and (3) to order the delivery of the proceeds of any public auction sale relevant to the execution of the Decision dated December 1, 2003 to respondent Thomas Johnson. No costs.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

⁷⁵ *Rollo*, p. 74.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson



MARIANO C. DEL CASTILLO
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
*Senior Associate Justice****

*** Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.