

RUPERTA CONSTANTINO, PETITIONER, VS. HON. NUMERIANO C. ESTENZO, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF ORMOC CITY; NUMERIANO SADIA, MARRIED TO ESPE...*G.R. No. L-40403. July 31, 1975*

Ponente: MUÑOZ PALMA, J.

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Submitted for resolution in this Petition for Review¹ is the sole question whether or not respondent Judge, Hon. Numeriano C. Estenzo, Court of First Instance of Leyte, Branch V, erred and gravely abused his discretion when he dismissed petitioner's complaint in Civil Case No. 1359-0, entitled: "Ruperta Constantino vs. Numeriano Sadia, et al." on Motion to Dismiss on grounds of prescription, without benefit of a trial on the merits.

On July 17, 1974, petitioner herein filed a complaint against spouses Numeriano Sadia and Esperanza Nicanor and spouses Valentin and Elvira Dulce, for "Annulment of documents, cancellation of transfer of certificate of title, and recovery of real property with damages." The complaint alleged inter alia the following: plaintiff, now petitioner, is the sole surviving legal heir of spouses Dionisia Caberos and Martin Constantino being the legitimate daughter of the latter. During the lifetime of petitioner's parents they acquired an agricultural land with improvements located in Barrio Aguiting, Ormoc (now Kananga, Leyte) with an area of 182,888 square meters more or less for which O.C.T. No. 35984 was issued in their names and which was subsequently reconstituted as O.C.T. No. RO-102. Sometime in August, 1970 petitioner went to the Office of the Register of Deeds of Leyte for the purpose of seeking the transfer of the title of the property to her name and to her surprise she discovered that O.C.T. No. RO-102 (35984) had been cancelled by virtue of a deed of extrajudicial settlement and partition dated June 15, 1959, executed by Elpidio Adolfo, Norberta Caberos, and Florentina Caberos, who claimed to be the sole heirs of the registered owners. There was also another document whereby one-half of the property was sold to Numeriano Sadia while the other half was sold to Elpidio Adolfo, and by virtue of those transactions O.C.T. RO-102 was cancelled and transfer certificate of title T-2337 was issued in favor of Numeriano Sadia married to Esperanza Nicanor to the extent of one-half of the property, and to Elpidio Adolfo married to Agustina Salido, as regards the other half. Petitioner likewise found out that the one-half portion allegedly belonging to Elpidio Adolfo was sold by the latter to spouses Valentin and Elvira Dulce by virtue of which T.C.T. No. T-2337 was cancelled and in lieu thereof T.C.T. No. 3744 was issued on December 13, 1962, in favor of spouses Dulce, one-half share, and to spouses Sadia, as regards the other half. The aforementioned deed of extrajudicial settlement of the estate of deceased person which resulted in the cancellation of the title in the name of petitioner's legitimate parents was a "simulated extrajudicial settlement" as the persons who executed the same were total strangers to the intestate estate of spouses Dionisia Caberos and Martin Constantino, and being a simulated alienation of property with intent to deprive the compulsory heirs of the registered owners of their legitime, the same is void and of no effect pursuant to Art. 221 paragraph (4) of the Civil Code, and the subsequent sales of the property are likewise null and void ab initio. (pp. 33-42, Rollo).

On August 21, 1974, defendant Numeriano Sadia, now one of the private respondents, filed his answer with counter-claim and as one of his affirmative defenses, alleged that the action had prescribed as fourteen years had elapsed from the date of the extrajudicial settlement and sale on June 15, 1959. (pp. 47-55, Rollo).

On August 28, 1974, respondent Judge issued an order to the following effect:

"ORDER

"As the grounds set forth in the special and affirmative defenses of defendants Sadia are grounds for a motion to dismiss, parties are ordered to submit their respective memorandum on September 13, 1974 at 7:30 A.M., at which time the incident will be heard and submitted for resolution, with or without memorandum." (p. 65, Rollo).

Pursuant to the above-quoted order of Judge Estenzo respondents Sadia filed their memorandum and so also did the other respondents Dulce without the latter having filed any answer to the complaint. In reply to the pleadings submitted by the private respondents, petitioner herein Constantino, opposed the dismissal of her complaint on the ground that there are factual allegations therein which need reception of evidence, especially since her complaint alleges that the deed of extrajudicial settlement of estate of deceased person is simulated and is null and void ab initio, and actions to declare such simulated contracts illegal or invalid do not prescribe.

Overruling the opposition of petitioner herein, and taking the memoranda of the private respondents as a basis, respondent Judge, on September 13, 1974, issued an order the pertinent portion of which follows:

"xxx xxx xxx

"Viewed in the light of the foregoing allegations of the complaint, it is obvious that the present action is for recovery of real property on the ground of fraud so that as against all defendants the same should have been filed on or before December 13, 1966.

"Pursuant to the foregoing Armentia and Fabian cases, the filing of the present action on July 17, 1974 is time barred.

"WHEREFORE, this case is hereby dismissed, without pronouncement as to costs." (p. 107, Rollo).

It is this order of dismissal which is now before Us for review. There is merit to this Petition.

From the allegations of petitioner's complaint, it is obvious that her cause of action is premised on her claim that the deed of "extrajudicial settlement of the estate of deceased person" is purely simulated, void, and of no effect, and that the deeds of sale of the property are likewise "illegal", "done in bad faith," and "null and void ab initio" because the rights transferred by such deeds were derived from the contested deed of extrajudicial settlement. The prayer in the complaint expressly asks that all those transactions be declared null and void ab initio.

Considering the foregoing allegations and prayer in the complaint and the provisions of Article 1409 (2) of the Civil Code that contracts absolutely simulated or fictitious are inexistent and void from the beginning, and of Article 1410 of the same Code which states that the action or defense for the declaration of the inexistence of a contract does not prescribe,[2] respondent Judge should not have summarily dismissed petitioner's complaint, instead, he should have required the other defendants, now respondents Dulce, to answer the complaint, deferred action on the special defense of prescription, and ordered the parties to proceed to a trial on the merits.

In *Garanciang vs. Garanciang*, supra, the Court of First Instance of Pangasinan dismissed plaintiffs complaint on a motion to dismiss for lack of cause of action and on grounds of prescription. In setting aside said order of dismissal, this Court, through then Justice now Chief Justice Querube Makalintal, held that inasmuch as there are

allegations in the complaint that the deeds of sale sought to be annulled are absolutely void and inexistent not only because of fraud but due to absence of cause or consideration, and considering that an action to set aside a contract that is fictitious, void, or inexistent does not prescribe (citing Art. 1410, Civil Code, *Borromeo vs. Borromeo, et al*, 98 Phil. 432, *Mapalo vs. Mapalo*, L-21628, May 19, 1966) the trial court erred in dismissing the complaint.

Had respondent Judge considered this Court's ruling in *Garanciang* and a similar pronouncement in *Bonaga vs. Soler, supra*, which also involved an outright dismissal of a complaint for reasons of prescription, he would have seen their applicability to the case before him, would have been guided accordingly, avoided undue delay in the proceedings below, saved the parties from unnecessary expense in litigating before this Court, and spared Us from the additional burden of rectifying errors of this nature. Summary or outright dismissals of actions are not proper where there are factual matters in dispute which need presentation and appreciation of evidence. The demands of a fair, impartial, and wise administration of justice call for a faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. "Short-cuts" in judicial processes are to be avoided where they impede rather than promote a judicious dispensation of justice.

WHEREFORE, the appealed order of respondent Judge is hereby set aside, and the case is remanded to the court below for a trial on the merits after respondents surnamed Dulce shall have answered the complaint, and the proper pre-trial shall have been held. With costs against private respondents.

So Ordered.

Castro (Chairman), Makasiar, Esguerra, and Martin, JJ., concur.

Teehankee, J., is on leave.

[1] This Petition for Review on Certiorari was filed on April 23, 1975 after an extension was granted to petitioner. Respondents were required to comment which they filed on May 16, 1975. In a Resolution of the First Division, May 28, 1975 the Court resolved to treat the petition for review as a special civil action, to consider respondents's comment as answer to the Petition, and the case submitted for decision. Subsequent thereto additional pleadings were filed by respondents all in opposition to the Petition for Review.

[2] *Tipton vs. Velasco*, 6 Phil. 67; *Bohaga vs. Soler*, L-15717, June 30, 1961, 2 SCRA 755; *Casenas vs. Rosales, et al.*, L-18707, February 28, 1967, 19 SCRA 462; *Garanciang, et al. vs. Garanciang, et al.*, L-22351, May 21, 1969, 28 SCRA 229.

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