

JUAN S. GELIG, ET AL., PLAINTIFF-APPELLANT, VS. CECILIA NAZARENO, LINDA NAZARENO, ISABEL MAGALLON VDA. DE NAZARENO, BRYAN SHERWIN NAZARENO, ROBERTO L. NAZARENO, MARIA DE GUZMAN ...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an Original Appeal[1] from the Order[2] of the Regional Trial Court (RTC), Branch 53, Lapu-lapu City dated January 18, 2006 in Civil Case No. 4690-L for Quieting of Title, Declaration of Nullity and Reconveyance with Temporary Restraining Order and/or Preliminary Injunction with Damages which granted defendants' motion to dismiss the case.

The Facts

The late Claudio Gelig and Guillerma Menguito were the owners of Lot No. 3589 situated at Agus, Lapu-lapu City, with a total land area of 24,211 square meters and previously covered by Original Certificate of Title (OCT) No. R0-0543. They were survived by their children, namely: Jesus Gelig, Lorenza Gelig, Emiliana Gelig and Atanacio Gelig who executed a Confirmation of Extrajudicial Partition and Adjudication of the Estate of Claudio Gelig wherein they partitioned and adjudicated among themselves Lot No. 3589 of the Opon Cadastre on September 17, 1965, in the following manner:

- To Atanacio – a part of Lot No. 3589 containing an area of 5,571 square meters, which was later on identified and designated as Lots Nos. 3589-A and 3589-B;
- To Lorenza, Emiliana and Jesus – a part of Lot No. 3589 containing an area of 18,640 square meters or at 5,571 square meters each, later on designated as Lot No. 3589-C.[3]

Atanacio sold his share (Lot Nos. 3589-A and 3589-B) to defendant-appellee Linda Nazareno and this transaction was contained in a Deed of Absolute Sale[4] dated October 7, 1965. Linda Nazareno had the entire Lot No. 3589 surveyed and subdivided and the title thereto was reconstituted at her own expense.

Lot No. 3589-C was subdivided into Lot No. 3589-C-1 and Lot No. 3589-C-2. Lot No. 3589-C-2 was subdivided into Lots Nos. 3589-C-2-A, 3589-C-2-B, and 3589-C-2-C. And, Lot No. 3589-C-2-C was subdivided into Lots Nos. 3589-C-2-C-1 and 3589-C-2-C-2.

Lorenza and Emiliana sold Lot No. 3589-C-1 to defendant-appellee Cecilia Nazareno, affixing in the document their thumbmarks. On the other hand, Jesus Gelig sold Lot No. 3589-C-2-B, with an area of 789 square meters, to Cecilia Nazareno, which lot is now covered by Transfer Certificate of Title (TCT) No. 21554 and registered in the name of defendant-appellee Bryan Sherwin R. Nazareno. Lot No. 3589-C-2-C-1 was sold by Jesus Gelig to defendant-appellee Linda Nazareno who subsequently conveyed it to her son, Jose Nazareno, Jr. covered by TCT No. 21748.

Plaintiff-appellant Juan Gelig filed a Complaint[5] on March 3, 1997, alleging that he is the heir of the late Jesus

Gelig, the latter being one of the children of Claudio and Guillerma. Plaintiff-appellant contended that the sale of Lots Nos. 3589-A and 3589-B by Atanacio to Linda Nazareno were made in a falsified document of sale; that the subsequent reconstitution of title over the lot by Linda Nazareno was made without the approval of the compulsory heirs of Claudio and Guillerma;[6] that the subdivision of Lot No. 3589-C was caused by Linda Nazareno and Cecilia Nazareno who conspired and confederated with each other in causing the execution of deeds of sale thereon in favor of close relatives through the use of fraudulent schemes and machinations; that Cecilia Nazareno, in confederation with her subsequent transferees, including Spouses Roberto and Renilda Nazareno, made it appear in a fictitious document through fraudulent and deceitful machinations that Lot No. 3589-C-1 was sold by Lorenza Gelig and Emiliana Gelig in favor of said Cecilia Nazareno with the vendors merely affixing only their thumb marks when, in truth and in fact, they could have affixed their signatures being lettered people.[7]

Plaintiff-appellant alleged that he came to know of the unlawful schemes and fraudulent machinations of the defendants only when the latter made initiatory steps to oust the former from the premises sometime in July 1996; that since then and until the present, or for over 32 years from the alleged extrajudicial settlement and partition of the estate of the late Claudio Gelig sometime in 1965, plaintiff-appellant has been in possession of the lots in question, publicly, adversely, notoriously and continuously, in concepto de dueño; that in fact, he has his residential house thereon and he had developed these lots and made improvements thereon without the slightest opposition and disturbance from the defendants.[8]

Plaintiff-appellant also alleged that the locations of Lots Nos. 3589-C-2-B and 3589-C-2-C-1 were fraudulently and deliberately chosen by the defendants without the consent of the plaintiff-appellant and his predecessors, hence, invalid; that the existence of TCT No. 21748 registered in the name of Jose L. Nazareno for Lot No. 3589-C-2-C-1, TCT No. 21554 registered in the name of Bryan Sherwin R. Nazareno for Lot No. 3589-C-2-B, and TCT No. 23993 for Lot No. 3589-C-1, registered in the name of Roberto L. Nazareno, are prejudicial and have cast a cloud to the title of the plaintiff-appellant over the lots in question, thus, the same must be quieted by ordering the reconveyance of these certificates of title to the plaintiff-appellant;[9] that the certificates of title over Lots Nos. 3589-C-2-B and 3589-C-2-C-1 shall be reconveyed in favor of the plaintiff-appellant and the defendants Isabel Magallon vda. de Nazareno and Bryan Sherwin R. Nazareno shall be given land areas at the rear portion or behind Lot No. 3589-C-2-C-2, in accordance with the true intention of the late Jesus Gelig pursuant to the cadastral map of the Opon Cadastre, and that another subdivision of the whole lot in question must be ordered to specify the true and correct location of the lots (3589-C-2-B and 3589-C-2-C-1) as originally intended by the vendor.[10]

Defendants-appellees filed their Answer with Compulsory Counterclaims[11] on April 25, 1997, wherein they narrated the transfers and subdivisions made on the subject property (Lot No. 3589).

In an Order[12] dated July 9, 1997, the RTC granted plaintiff-appellant's Motion for Leave to Admit Amended Complaint.[13] The plaintiff-appellant's Amended Complaint[14] impleaded the following defendants in their capacities as the present transferees/registered owners of the subject parcels of land, viz: Maria de Guzman Nazareno, Ciriaco Escutin, Reizhelle Marie Nazareno, and Rodolfo Aparri.

On October 15, 1997, newly impleaded defendant-appellee Rodolfo Aparri, filed his Answer (with Compulsory Counterclaim)[15] alleging that sometime in the early part of April 1990, Col. Arsenio De Guzman, through Col. Fortunato de Gracia, Jr. offered to sell to Rodolfo a certain parcel of land known as Lot No. 3589-A-2 situated in Agus, Lapu-lapu City, covered by TCT No. 2775 registered in the former's name containing an area of one thousand two hundred ninety nine (1,299) square meters; that Rodolfo decided to purchase the same on May 20, 1997, after going over the location of the lot and relying on the correctness of the Certificate of Title; that TCT

No. 2775 in the name of Lt. Col. Arsenio D. de Guzman was cancelled and in lieu thereof TCT No. 21691 in the name of Rodolfo was issued;[16] that subsequently, Rodolfo had the property surveyed and caused the construction of a concrete fence over the said parcel of land and introduced improvements thereon without an opposition from anybody; that since then and up to the present, Rodolfo has been in possession of the lot in question, publicly, notoriously and continuously and have been religiously paying the taxes thereon.[17]

Defendant-appellee Maria de Guzman-Nazareno also filed her Answer[18] alleging that she is a buyer in good faith and for value and acquired Lot No. 3589-B-1 thru legal and valid mode of transfer; that she has been in actual, constructive, public, notorious and continuous possession of the lot since 1970, for almost twenty seven (27) years; that plaintiff-appellant has no legal personality to prosecute this kind of action being not a party to the transaction; that plaintiff-appellant is estopped from questioning or denying the rights or title of the defendants because the former had full knowledge of the status of the property that it was ceded/sold/transferred to third parties by their ascendants or predecessors in interest;[19] that granting without admitting that plaintiff-appellant has real rights over the properties in issue, his failure or neglect in exercising the right to prosecute and contest the same for an unreasonable length of time would bar him forever to lay claims over the same under the principle of estoppel by laches.

Defendants-appellees Reizhelle Marie R. Nazareno and Ciriaco Escutin filed an Appearance with Manifestation and Motion to Set Case for Pre-Trial Conference[20] on September 25, 2000, manifesting that they are adopting the Answer with Compulsory Counterclaims filed by the original defendants as their own answer to the Amended Complaint and the setting of the case for pre-trial conference. On June 27, 2001, defendants filed a Second Motion to Set Case for Pre-Trial Conference. In an Order[21] dated July 23, 2001, the RTC ruled:

It should have been plaintiff who should file the motion for pre-trial. The non-filing is, however, understandable, as the record shows that this Court has not yet received the return of summons by the serving officer in RTC-Manila, NCR, despite the 17 September 1999 Order, copy of which was received by the Clerk of Court OCC, RTC Manila, National Capital Region, per Registry Return Receipt attached to the record.

The Court will act accordingly upon the receipt of the return.

On August 10, 2001, defendants-appellees Reizhelle Marie R. Nazareno and Ciriaco Escutin filed a Motion to Dismiss with Manifestation[22] pointing out that in their prior Appearance with Manifestation, they manifested that they were adopting the Answer with Counterclaim filed by the original defendants as their own Answer in the Amended Complaint, hence, the issues have already been joined and that as early as September 25, 2000, the case was already ripe for pre-trial conference; that plaintiff failed and refused to move ex parte that the case be set for pre-trial conference which indicates his lack of interest to further prosecute the case and violates defendants' right to speedy disposition of cases.

On October 3, 2001, plaintiff-appellant filed an Opposition to Motion to Dismiss with Motion to Set Case for Pre-Trial Conference[23] alleging that defendants should not take advantage of the RTC's oversight of defendants' manifestation to adopt the previous Answer with Counterclaim; and that it will serve the ends of justice to deny the motion to dismiss and set the case for pre-trial conference.

On April 16, 2002, plaintiff-appellant filed a Motion to Admit Second Amended Complaint[24] impleading additional defendants but subsequently, he filed a Motion to Admit Third Amended Complaint[25] dropping them as party defendants. In an Order[26] dated March 14, 2003, the RTC granted plaintiff-appellant's Motion to Admit Third Amended Complaint.

After the Third Amended Complaint was admitted, defendant filed a Motion to Dismiss[27] dated March 12, 2003 praying for the dismissal of the case for plaintiff's failure to prosecute the same. Defendants also subsequently

filed a Supplemental Motion to Dismiss[28] dated August 12, 2005 on the ground of lack of cause or causes of action.

On January 18, 2006, the Regional Trial Court rendered the assailed Order,[29] the dispositive portion of which states:

WHEREFORE, defendants' motion to dismiss is granted, and the above-entitled case is hereby dismissed.

SO ORDERED.

The RTC ruled that plaintiff-appellant is not a party to any of the conveyances affecting Lot No. 3589 and that all the alienations of portions of Lot No. 3589 to other persons were made by the children of the spouses Claudio Gelig and Guillerma Menguito; that plaintiff-appellant is not a declared heir of Atanacio Gelig, Lorenza Gelig and Emiliana Gelig; that he has therefore no right or interest over the shares of these three children of Claudio and Guillerma; and that he has no personality to question whatever transactions they had entered into in connection with their respective shares of Lot No. 3589.[30]

The RTC further held that plaintiff-appellant is not even a declared heir of the late Jesus Gelig of whom he said in his Third Amended Complaint that he is the only surviving heir; that it appears that plaintiff-appellant has siblings whom he has not impleaded either as plaintiffs or as defendants; that his brother Sergio Gelig, has even filed a case for perjury against him pending before the RTC in Cities, Lapu-lapu City, which has been docketed as Criminal Case No. R-19455, which the Court takes judicial notice; that as reflected in the record of Criminal Case No. R-19455, plaintiff has two living siblings and one deceased sibling whose children are living about two kilometers from accused's place; that in claiming that he is the sole surviving heir of Jesus Gelig, plaintiff-appellant is hiding the truth, thus, the verification and certification in his Third Amended Complaint which he had signed under oath suffers from a very serious infirmity.[31]

Further, the RTC ruled that a cursory look at the Third Amended Complaint and its annexes shows that plaintiff-appellant's cause of action has already prescribed; that an action for reconveyance of real property as a result of fraud prescribes in four (4) years and if it is based on implied or constructive trust, it prescribes in ten (10) years.

Hence, this appeal with the following Assignment of Error:[32]

- THE LOWER COURT ERRED IN FINDING PLAINTIFF-APPELLANT AS HAVING NO RIGHTS AND INTEREST ON THE LOTS SUBJECT OF THIS CASE;
- THE LOWER COURT ERRED IN DISMISSING THIS CASE ON THE BASIS OF PRESCRIPTION, INVOKING THE RULE THAT AN ACTION FOR RECONVEYANCE OF REAL PROPERTY AS A RESULT OF FRAUD PRESCRIBES IN FOUR (4) YEARS; and
- THE LOWER COURT ERRED IN DISMISSING THIS CASE WITHOUT CONDUCTING A FORMAL HEARING ON THE MERITS OF THIS CASE.

Plaintiff-Appellant's Arguments

Appellant argues that he has clear legal rights and interest over the real properties in litigation, being the sole surviving heir of his predecessors-in-interest; that he is the sole surviving heir of his parent Jesus Gelig and the latter's siblings Atanacio, Lorenza and Emiliana who died without issue; that Jesus, Atanacio, Lorenza and Emiliana were in turn primary compulsory heirs of the deceased spouses Claudio Gelig and Guillerma Menguito, original owners of Lot No. 3589; that as such sole surviving heir, he succeeded to the estate of his predecessors-in-interest.[33]

Appellant contends that the reasoning of the lower court that he has not been declared as heir of Jesus, Atanacio, Lorenza and Emiliana, is opposed to jurisprudence as the Supreme Court in one case ruled that it was impractical to subject an ordinary civil case to administration proceedings just to determine who are the heirs entitled to the estate; that there was no pre-trial as yet in which the parties could have defined the issues to be resolved, therefore, there was more reason to conduct further proceedings given the fact that the case originally involved only one lot –Lot 3589 belonging to the estate of the appellant’s predecessors-in-interest.[34]

Further, appellant argues that the lower court overlooked the material allegation in his Complaint regarding the fact of being in possession of the property since the extrajudicial settlement and partition of the estate of the late Claudio Gelig sometime in 1965, publicly, adversely, notoriously and continuously, in concepto de dueño; that the lower court should have allowed the appellant to substantiate this allegation in a formal hearing on the merits of the case; that the motion to dismiss on the ground of prescription will be given due course only if the complaint shows on its face that the action has already prescribed; that if it does not so appear, the determination of the motion to dismiss must be deferred until trial.[35]

Appellant alleges it was reversible error for the lower court to have dismissed his case without hearing on the merits; that the only hearing that was conducted by the lower court was the sampling of evidence relative to the application for temporary restraining order and writ of preliminary injunction filed by the appellant which was denied; that it was not a full-blown hearing to determine the merits of the case.[36]

This Court issued a Resolution[37] dated January 17, 2013 submitting the case for decision sans Appellee’s Brief.

The Court’s Ruling.

The appeal is meritorious.

Upon examination of defendants’ Motion to Dismiss[38] filed on March 13, 2003 and Supplemental Motion to Dismiss[39] filed on August 15, 2005, the grounds raised were failure to prosecute under Rule 17, Section 3 of the Rules of Court and lack of cause of action. Let us examine these grounds:

Rule 17, Section 3 of the 1997 Rules of Civil Procedure provides:

Sec. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court’s own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits unless otherwise declared by the court. (Emphasis supplied)

In relation to the above Rule, Rule 18, Sec. 1 provides:

Sec. 1. When conducted. – After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move ex parte that the case be set for pre-trial.

However, on August 16, 2004, A.M. No. 03-1-09-SC (Re: Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures) took effect, which provides that: Within five (5) days from date of filing of the reply, the plaintiff must promptly move ex parte that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial.

On March 5, 2003, the Motion to Admit the Attached Third Amended Complaint was filed by plaintiff-appellant. On March 14, 2003, the RTC issued an Order granting the same. Under the 1997 Rules of Civil Procedure, defendants had ten (10) days from notice of the order admitting the amended complaint to file an answer

thereto.[40] In the present case, the RTC issued a Notice of Order dated April 11, 2003, notifying the parties' counsel of the grant of the Motion to Admit the Third Amended Complaint. It is apparent from the records of this case that no new Answer was filed by the defendants; hence, the Answer earlier filed may serve as the answer to the amended complaint.[41]

Again, instead of filing an Answer to the Third Amended Complaint, We take note of the fact that defendants, in the same case, filed a Petition to Cancel Notice of Lis Pendens[42] on June 6, 2003 or just around two (2) months from the Notice of Order admitting the Third Amended Complaint. The same was granted by the RTC in an Order[43] dated June 15, 2004. Plaintiff-appellant filed a Motion for Reconsideration[44] on July 12, 2004 of the Order but the same was denied by the RTC in an Order[45] dated September 30, 2004. The matter of the cancellation of the Notice of Lis Pendens went up to the Court of Appeals and the Supreme Court.

It must be observed that during this period, in August 2004, A.M. No. 03-1-09-SC already took effect. This amendment to the rule on pre-trial now imposes on the clerk of court the duty to issue a notice of pre-trial if the plaintiff fails to file a motion to set the case for pre-trial conference.[46] Therefore, it is incumbent upon the Branch Clerk of Court to issue a notice of pre-trial but none was issued in the case below.

The developments in the present case do not satisfy the stringent standards set in law and jurisprudence for failure to prosecute (non prosecutur). The fundamental test for non prosecutur is whether, under the circumstances, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. There must be unwillingness on the part of the plaintiff to prosecute. In this case, plaintiff-appellant could not be faulted for not filing a motion to set the case for pre-trial because of the pending incident which was the Petition to Cancel Notice of Lis Pendens filed by the defendants-appellees. In fact, in a previous Order[47] by the RTC resolving defendants' previous Motion to Dismiss on the same ground that plaintiff-appellant failed to prosecute his case for an unreasonable length of time without any reason, the lower court denied the same on the ground that the record shows that the returns of the service of summons on the newly impleaded defendants have not yet been forwarded to the Court; hence, there is no showing that the said defendants were served with summons, either personally or by substituted service.

We also find good reason that plaintiff-appellant acted in good faith when it did not move to set the case for pre-trial, since defendants already moved, more than once, for the pre-trial setting. Another motion from him can be simply repetitive of defendants-appellees' earlier motions.[48] Further, We cannot fault plaintiff-appellant for relying on the RTC's Order dated July 23, 2001 that it will act accordingly on the pre-trial conference upon its receipt of the return of summons. In fact, plaintiff-appellant already filed a motion to set the case for pre-trial as early as October 3, 2001 in his Opposition to Motion to Dismiss with Motion to Set Case for Pre-Trial Conference.[49] However, the lower court did not act upon the same.

Now with respect to the ground of lack of cause of action, We find the same to be improper in a Motion to Dismiss. The proper ground is failure to state cause of action pursuant to Section 1(g) of Rule 16 of the Rules of Court, which specifically provides:

xxx

(g) That the pleading asserting the claim states no cause of action;

xxx

The difference between failure to state a cause of action and lack of cause of action is explained, to wit:[50]

Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal

under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction:

xxx What is contemplated, therefore, is a failure to state a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the pleading. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence does not prove a cause of action. This is, therefore, a matter of insufficiency of evidence. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted.

A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

- (a) The legal right of the plaintiff;
- (b) The correlative obligation of the defendant; and
- (c) The act or omission of the defendant in violation of said legal right.

If the allegations of the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. Evidently, it is not the lack or absence of a cause of action that is a ground for the dismissal of the complaint but the fact that the complaint states no cause of action. Failure to state a cause of action may be raised at the earliest stages of an action through a motion to dismiss, but lack of cause of action may be raised at any time after the questions of fact have been resolved on the basis of the stipulations, admissions, or evidence presented. (Emphasis supplied)

It is a well-settled rule that the existence of a cause of action is determined by the allegations in the complaint. In the resolution of a motion to dismiss based on failure to state a cause of action, only the facts alleged in the complaint must be considered. The test in cases like these is whether a court can render a valid judgment on the complaint based upon the facts alleged and pursuant to the prayer therein. Hence, it has been held that a motion to dismiss generally partakes of the nature of a demurrer which hypothetically admits the truth of the factual allegations made in a complaint. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.[51]

In this case, however, the lower court dismissed the Complaint by relying on allegations beyond the Complaint, specifically, on the basis of the evidence presented in the Petition to Cancel Notice of Lis Pendens. It was improper because the resolution of whether or not the Complaint fails to state a cause of action should be resolved only on the basis of the allegations in the Complaint. Upon a thorough examination of the Complaint (Third Amended Complaint), We are satisfied that the plaintiff-appellant complied with the requirements of stating his cause of action for quieting of title, declaration of nullity and reconveyance when he alleged: that he is an heir of the late Jesus Gelig and that Jesus Gelig is an heir of the original owners Claudio and Guillerma; and that the existence of the subsequent Transfer Certificates of Title in the name of the defendants-appellees have cast a cloud to his title over the lots in question, thus, the same must be quieted by ordering the reconveyance thereof.

The assailed Order of the RTC which granted defendants' Motion to Dismiss stated the following grounds:

- (1) That plaintiff-appellant is not a party to any of the conveyances affecting Lot No. 3589;

- (2) That plaintiff-appellant is not a declared heir of Atanacio, Lorenza and Emiliana;
- (3) That plaintiff-appellant has no right or interest over the shares of the children of Claudio and Guillerma;
- (4) That plaintiff-appellant has no personality to question the transactions involving Lot No. 3589;
- (5) That plaintiff-appellant is not a declared heir of the late Jesus Gelig;
- (6) That plaintiff-appellant appears to have siblings who are not impleaded either as plaintiffs or as defendants;
- (7) That plaintiff-appellant's cause of action for reconveyance of real property has already prescribed.

However, number (1), (2), (3), (4), and (5) above may only be properly considered after the presentation of the evidence of the parties. These grounds are not proper under a Motion to Dismiss on the ground of failure to state a cause of action. In the present case, the questions of fact have not been resolved because no stipulations, admissions, or evidence were yet presented.

On the issue that plaintiff-appellant is not a party to any of the conveyances (1), We note that, precisely, plaintiff-appellant is questioning the genuineness and authenticity of the transfers made with Lot No. 3589 relying on his claim as an heir of Jesus Gelig. Whether or not plaintiff-appellant is indeed an heir of Jesus Gelig and therefore entitled to his cause of action for quieting of title and reconveyance depends on the evidence that may be presented during the trial on the merits and not preliminarily on the basis of a motion to dismiss for failure to state cause of action.

The declaration of heirship, in the present case, may be made in the same action for reconveyance as it appears that only one parcel of land (Lot No. 3589) being claimed by the contending parties and that it would be more impractical to dispense with a separate special proceeding for the determination of the status of plaintiff-appellant as an heir of Jesus Gelig.[52] In fact, the Supreme Court has actually ruled upon the issue of heirship in an action for recovery of property and ownership and possession wherein the plaintiff therein claimed to be the sole owner of the property involved for having inherited the same from her deceased mother. It was ruled in the case of *Heirs of Gabatan v. Court of Appeals*[53] that:

Respondent, in asserting to be entitled to possession and ownership of the property, pinned her claim entirely on her alleged status as sole heir of Juan Gabatan. It was incumbent upon her to present preponderant evidence in support of her complaint. xxx

It was absolutely crucial to respondent's cause of action that she convincingly proves the filiation of her mother to Juan Gabatan. To reiterate, to prove the relationship of respondent's mother to Juan Gabatan, our laws dictate that the best evidence of such familial tie was the record of birth appearing in the Civil Register, or an authentic document or a final judgment. In the absence of these, respondent should have presented proof that her mother enjoyed the continuous possession of the status of a legitimate child. Only in the absence of these two classes of evidence is the respondent allowed to present other proof admissible under the Rules of Court of her mother's relationship to Juan Gabatan. (Emphasis supplied)

From the above ruling, it is clear that the issue of plaintiff-appellant's claim of heirship and, correspondingly, his right to question the conveyances may be ruled upon by the court but only after consideration of the evidence that may be presented by the parties.

On the other hand, number (6) is not a ground for dismissal of an action. It is a settled rule that "non-joinder of indispensable parties is not a ground for the dismissal of an action. At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the

complaint for the plaintiff's failure to comply with the order. The remedy is to implead the non-party claimed to be indispensable"[54] Thus, the dismissal of the case for failure to state a cause of action is improper. What the trial court should have done is to direct plaintiff-appellant to implead his brothers and sisters, if any, within a reasonable time from notice with a warning that his failure to do so shall mean dismissal of the complaint.

Finally, number (7) on prescription as a ground for the dismissal was improper. "An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss."[55]

In the present case, the action is for quieting of title, declaration of nullity and reconveyance. In an action for reconveyance wherein the plaintiff is in possession of the property, prescription does not commence to run against him; it would be in the nature of a suit for quieting of title, an action that is imprescriptible.[56] It is clear in the present case that plaintiff alleged, in his Complaint, that he is in possession of the properties involved, to wit:

25. That since then and until at present, or for over 32 years from the alleged extrajudicial settlement and partition of the estate of the late Claudio Gelig sometime in 1965, plaintiff has been in possession of the lots in question, publicly, adversely, notoriously and continuously, in concepto de dueño, in fact, he has his residential house erected thereon and had developed these lots and made improvements thereon without the slightest opposition and disturbance from the defendants xxx

The allegation in the Complaint of possession destroys the ruling that the cause of action of plaintiff-appellant has already prescribed. Upon such allegation, for prescription to set in, it must be proved that plaintiff-appellant is actually not in possession of the property. Such proof may only be had in a full blown trial and after the presentation of evidence of the parties.

WHEREFORE, the instant appeal is GRANTED. The assailed Order of the Regional Trial Court dismissing Civil Case No. 4690-L is SET ASIDE and the trial court is directed to REINSTATE the Complaint and to proceed with the pre-trial of the case until its termination with utmost dispatch.

SO ORDERED.

Delos Santos, E.L., Chairperson., and Lagura-Yap, M.B., JJ., concur.

[1] Rule 44, The 1997 Rules of Civil Procedure.

[2] Rollo, pp. 31-38.

[3] Main Record, p. 2.

[4] Annex "1," Main Record, p. 69.

[5] Main Record, pp. 1-8.

[6] Id. at pp. 2-3.

[7] Id. at p. 3.

[8] Id. at p. 4.

[9] Id. at p. 5.

[10] Id. at pp. 5-6.

- [11] Id. at pp. 47-68.
- [12] Id. at p. 105.
- [13] Id. at p. 102.
- [14] Id. at pp. 93-101.
- [15] Id. at pp. 123-131.
- [16] Id. at p. 128.
- [17] Id. at p. 129.
- [18] Id. at pp. 138-143.
- [19] Id. at p. 139.
- [20] Id. at pp. 165-166.
- [21] Id. at p. 169.
- [22] Id. at pp. 171-172.
- [23] Id. at pp. 181-182.
- [24] Id. at pp. 187-188.
- [25] Id. at pp. 220-221.
- [26] Id. at p. 259.
- [27] Id. at p. 256.
- [28] Id. at pp. 429-431.
- [29] Id. at pp. 442-449.
- [30] Id. at p. 446.
- [31] Id. at p. 446.
- [32] Rollo, p. 18.
- [33] Id. at p. 25.
- [34] Id. at p. 26.
- [35] Id. at p. 27.
- [36] Id. at p. 28.
- [37] Id. at pp. 40-41.
- [38] Id. at pp. 256-258.
- [39] Id. at pp. 429-431.
- [40] Rule 11, Sec. 3, par. 2, 1st sentence.
- [41] Rule 11, Sec. 3, par. 2, 2nd sentence.

[42] Main Record, pp. 261-271.

[43] Id. at pp. 286-288.

[44] Id. at pp. 290-298.

[45] Id. at pp. 299-302.

[46] Eloisa Merchandising, Inc. v. Banco de Oro Universal Bank, G.R. No. 192716, June 13, 2012.

[47] Main Record, pp. 161-162.

[48] LBL Industries, Inc. v. City of Lapu-lapu, G.R. No. 201760, September 16, 2013.

[49] Id. at pp. 181-182.

[50] Macaslang v. Zamora, G.R. No. 156375, May 30, 2011.

[51] Republic v. Hon. Mangotara, G.R. No. 170375, July 7, 2010.

[52] Heirs of Gabatan v. Court of Appeal, GR. No. 150206, March 13, 2009, citing Portugal v. Portugal-Beltran, G.R. No. 155555, August 16, 2005.

[53] G.R. 150206, March 13, 2009.

[54] Heirs of Mesina v. Heirs of Domingo Fian, Sr., G.R. No. 201816, April 8, 2013.

[55] Sanchez v. Sanchez, G.R. No. 187661, December 4, 2013.

[56] Brito, Sr. v. Dianala, G.R. No. 171717, December 15, 2010.

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