

HEIRS OF ANTONIO BERNARDES, NAMELY: CONSTANCIO S. BERNARDES, DIANA BERNARDES-CHAWDHURY, MARILOU BERNARDES-LUCENTE, ANTONIO V. BERNARDES, JR., JEVON V. BERNARDES, THOMAS LEO V. B...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This appeal under Rule 41 of the Rules of Court, as amended, seeks to reverse the Order[1] dated November 22, 2006 of the Regional Trial Court, Branch 16, Naval, Biliran.

THE ANTECEDENT FACTS

Antonio Bernardes during his lifetime, owned and possessed parcels of land particularly described as:

Parcel No.1-An agricultural land situated in Atipolo, Naval, Biliran, under the name of Heirs of Antonio Bernardes containing an area of 0.2000;

Parcel No. 2-An agricultural land situated in Atipolo, Naval, Biliran, under the name of Heirs of Antonio Bernardes containing an area of 12,739.30.

On September 19, 2000, defendant-appellee Ludenilo Ador, sheriff of RTC, Branch 16, Naval, Biliran issued a Notice of Attachment upon Realty by virtue of a writ of execution issued in Civil Case No. B-0783 for Recognition and Support filed by Edita Co, as natural guardian and mother of minor Ivan Romulo Co-Bernardes, against Romulo V. Bernardes. The Notice of Attachment upon Realty dated September 19, 2000 was made upon the two parcels of land described in the above. However, these properties are not divided yet and still owned in common by the Heirs of Antonio Bernardes.

Ludenilo Ador, in his capacity as court sheriff, issued a Notice of Sale on Execution of Real Property of the share of Romulo Bernardes dated March 7, 2001. Acting on the notice, plaintiff Diana Bernardes Chawdhury and Thomas Leo Bernardes (plaintiffs-appellants) filed an affidavit claiming their ownership over the properties levied upon. In their affidavit they said that Romulo Bernardes has already sold his share of the properties. Thus, Sheriff Ludenilo Ador required the Heirs of Antonio Bernardes to submit the necessary documents to support their claim. The latter complied and submitted the documents which consisted of conveyances over the portion of the levied properties. Despite the claim from the Heirs of Antonio Bernardes, Sheriff Ludenilo Ador proceeded with the auction sale of the subject properties on December 19, 2001. A Certificate of Sale was approved by the trial court. Thereafter, a Writ of Possession was issued upon the share of the levied properties of Romulo Bernardes.

On September 2, 2005, the Heirs of Antonio Bernardes filed their second Amended Petition for Annulment of Execution Sale, etc. against Edita E. Co, Sheriff Ludenilo S. Ador and Romulo Bernardes. After pre-trial, the initial presentation of the plaintiffs' evidence was scheduled. Marilou Bernardes-Lucente, one of the plaintiffs,

testified on direct examination after which a continuance was granted on November 15, 2006. Five (5) days before November 15, 2006, plaintiff Marilou Bernardes-Lucente informed her counsel of her inability to appear on November 15, 2006 due to the confinement of her mother-in-law at the ICU of Tacloban City Hospital. The hearing was reset to November 22, 2006. On November 22, 2006, the trial court dismissed plaintiffs' petition on the ground of counsel's failure to appear. Pertinent portion[2] of the order reads:

When this case was called for trial, the plaintiffs are not present in Court. They are supposed to present their witness today.

The Court is constrained to dismiss the case for the non-appearance of the counsel.

The Court lost jurisdiction of this case based on the ruling of the Supreme Court in the case of Allied Free Workers Union vs. Estipona (3 SCRA 780) which says:

“An order of execution is not merely interlocutory but final in character because its purpose is to enforce a decision on the merits rendered in the main case.”

The writ of execution had already been implemented.

WHEREFORE, this case is hereby DISMISSED for lack of jurisdiction.

On Motion for Reconsideration, the plaintiffs explained that on November 22, 2006, the latter could not attend the hearing because she was still taking care of her mother-in-law who was still confined in the hospital. The inability to attend the hearing was only relayed to the counsel on November 22, 2006 and there was no longer time to prepare a motion for the cancellation of the scheduled hearing. Plaintiffs counsel opted to inform through a long distance call the Branch Clerk of Court of RTC, Branch 16, Naval, Biliran.

In the Order dated March 15, 2007, the court a quo resolved to deny the Motion for Reconsideration, in this wise:[3]

xxxxx

In the instant case, plaintiffs made the defendant in the claim for support in arrears determined already in a previous litigation for support and acknowledgment, a defendant in the instant case.

This should not be the case. They are practically asking the court to set aside its judgment in the original cases with RTC, Leyte and now RTC Biliran.

It is not the non-appearance of counsel nor jurisdiction of the court only. Simply, the petitioners have a different cause of action. That is the Recovery of Ownership, not Annulment of Execution Sale.

For why should Romulo Bernardes, one of the siblings of the plaintiffs made a defendant, and the court which decided the main case for support?

WHEREFORE, premises considered, the court finds no merit in the motion for reconsideration. The same is DENIED.

SO ORDERED.[4]

Hence, this appeal.[5]

ASSIGNMENT OF ERRORS

I

THE COURT A QUO ERRED IN DISMISSING THE CASE OUTRIGHT DUE TO THE

NON-APPEARANCE OF THE COUNSEL ON THE HEARING SCHEDULED LAST NOVEMBER 22, 2006 AND EVEN DENYING THE EXPLANATION OF PLAINTIFFS-APPELLANTS IN ITS MOTION FOR RECONSIDERATION, THUS DEPRIVING THE PLAINTIFFS-APPELLANTS OF THEIR RIGHTS TO DUE PROCESS WHILE DISMISSING THE CASE ON A MERE TECHNICALITY IN CONTRAVENTION OF THE SUPREME COURT RULING IN THE CASES OF SALAZAR VS. COURT OF APPEALS (G.R. NO. 142920, FEBRUARY 6, 2002) AND JARO VS. COURT OF APPEALS (G.R. NO. 127536, FEB. 19, 2002).

II

THE COURT A QUO ERRED IN DISMISSING THE CASE ON THE GROUND OF LACK OF JURISDICTION EVEN THE CASE IS CLEARLY ONE IN WHICH THE RELIEF DEMANDED IS INCAPABLE OF PECUNIARY ESTIMATION, HENCE, WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT.

III

THE COURT A QUO ERRED IN DISMISSING THE CASE ON THE GROUND THAT IT LOST JURISDICTION OF THE CASE BASED ON THE RULING IN ALLIED FREE WORKER'S UNION VS. ESTIPONA (3 SCRA 780) AND CITING AS BASIS THAT THE WRIT OF EXECUTION HAS LONG BEEN IMPLEMENTED.

IV

THE COURT A QUO ERRED IN DISMISSING THE CASE ON THE GROUND THAT PETITIONERS (PLAINTIFFS-APPELLANTS) HAVE A DIFFERENT CAUSE OF ACTION AND PARTICULARLY IN HOLDING THAT PLAINTIFFS-APPELLANTS ARE PRAYING FOR RECOVERY OF OWNERSHIP AND NOT ANNULMENT OF EXECUTION SALE.

Plaintiffs-Appellants' Arguments.

Plaintiffs-appellants argue that the outright dismissal of their case was erroneous and seriously flawed. The court a quo dismissed the case based on non-appearance of lawyer; lack of jurisdiction because the writ has been implemented and lack of cause of action because it should have been a case for Recovery of Ownership and not Annulment of Execution Sale. These circumstances violated the concept that Rules of Procedure are intended to promote, not defeat substantial justice. The court a quo should not have dismissed the case for failure to present their evidence-in-chief. The plaintiffs-appellants emphasize that they have commenced presentation of their evidence. Marilou Bernardes-Lucente had already testified on initial direct examination on October 18, 2006.[6] Upon Motion for Postponement by the plaintiff Bernardes-Lucente's Counsel, the continuation of the hearing was reset to November 22, 2006.[7]

It is the stand of the plaintiffs-appellants that the action for Annulment of the Certificate of Sale is well within the jurisdiction of the court a quo. The principal relief of praying for the declaration of nullity of the certificate of sale with reconveyance of the subject parcels of land is incapable of pecuniary estimation. This is evident from the allegations in the complaint. Following the principle that jurisdiction over the subject matter is determined by the allegations in the complaint, it is therefore an error for the court a quo to dismiss the case due to lack of jurisdiction.

The plaintiffs-appellants also aver that the court a quo erred when it dismissed the case based on the ground that the writ of execution has long been implemented. While Section 1, Rule 9 of the Rules of Court authorizes the dismissal of the action by the court on its own motion, the rule is limited to three grounds: 1. lack of jurisdiction over the subject matter; 2. pendency of another action between the same parties for the same cause; 3. bar by prior

judgment or statute of limitations. Accordingly, the court a quo is not authorized to dismiss the case on the ground that the writ of execution has long been implemented.

According to the plaintiffs-appellants, the case of *Allied Free Worker's Union vs. Estipona*[8] is not applicable because it deals with the issue of whether or not the Municipal Trial Court, that issued the writ of execution, has the jurisdiction to make such order in view of the absence of the judge presiding over the Court of First Instance that rendered the decision. The above mentioned case only deliberated on whether or not the Municipal Judge's order can be considered interlocutory to settle the issue of jurisdiction. It does not dwell on the issue of whether or not the court has authority to dismiss a pending case on the ground of lack of jurisdiction due to the implementation of writ of execution, such as in this appealed case.

The court a quo's contention that the plaintiffs-appellants have a different cause of action is misplaced. The allegations in the Amended Petitions clearly stressed on the spurious and fraudulent auction sale conducted by Sheriff Ludenilo Ador. The petition also alleged that the properties levied are still held in common among the Heirs of Antonio Bernardes (plaintiffs-appellants). Thus, there is no reason to hold that plaintiff's-appellants' cause of action is for recovery of ownership when the petition itself clearly asked for the declaration of nullity of the execution sale.

Defendant-Appellee Edita Co's Arguments.

It is the stand of the defendant-appellee Co that the court a quo was correct when it dismissed the case because of the failure of the plaintiff-appellant Marilou Bernardes-Lucente and her counsel to appear in the November 15 and 22, 2006 hearings. In the defendant-appellee's Motion for Reconsideration, they did not attach a medical certificate. The name of the hospital was not even mentioned in its Motion for Reconsideration.

Defendant-appellee Co contends that the action of Annulment of Sale may lead to the recovery of possession. She elucidates that the jurisdiction of the court is determined by the principal cause of action of the plaintiff. In cases incapable of pecuniary estimation, it is the Regional Trial Court which has jurisdiction while in the recovery of real property, the assessed value is the determining factor. If the objective of the plaintiff-appellant was to recover ownership of the property, its assessed value was not alleged in the Amended Petition. In the absence of such allegation, jurisdiction lies with the Municipal Trial Court and not with the Regional Trial Court.

Defendant-appellee Co states that plaintiffs-appellants' only intention is to put the share of Romulo Bernardes away from the reach of the court. If Romulo Bernardes was able to sell his share, it would be safe to conclude that there was already a partition or identification of the shares of the other heirs. If the portions acquired by defendant-appellee Edita Co had been sold already to third persons, then the real parties in interest to file a complaint for recovery or annulment of sale should be the buyers themselves.

THE COURT'S RULING

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.[9]

We rule for the plaintiffs-appellants.

Section 3, Rule 17 of the Rules of Court states the grounds for dismissal due to fault of plaintiff, viz:

- (a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief;

- (b) Failure of the plaintiff to prosecute his action for an unreasonable length of time;
- (c) Failure of the plaintiff to comply with the Rules of Court;
- (d) Failure of the plaintiff to obey any order of the court.

The surrounding circumstances in this case, do not satisfy the standards set in law for a non prosequitur. On the contrary, the facts demonstrate the willingness of the plaintiffs-appellants to prosecute their case. Perusal of the Motion for Reconsideration[10] filed by the plaintiffs-appellants would show that they (plaintiffs-appellants) have a justifiable reason why they could not attend the 15[th] and 22[nd] November, 2006 hearings. The plaintiff-appellant Marilou Bernardes Lucente had to take care of her mother-in-law in the ICU. It is also noteworthy to say that in the Motion for Reconsideration[11], it mentioned that the defendants' counsel had filed an Urgent Motion for Postponement for the November 22, 2006 hearing which explains why plaintiffs' counsel no longer appeared on the said date. Moreover, plaintiffs-appellants already started presenting their evidence-in-chief during the first hearing on October 18, 2006.[12] It can be said that the subsequent hearings were cancelled due to the Motions for Postponement filed. This circumstance clearly negates non-prosequitur by plaintiffs-appellants.

We cannot therefore sustain the assailed order dismissing the instant case on a mere technicality. The answer to the judicious resolution of the instant case is not to dwell on technicalities, but to decide the issues on their merits promptly. It is a well-settled rule that a litigation is not a game of technicalities, in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapiers thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.[13]

In the case of *Concordia Medel Gomez, vs. Corazon Medel Alcantara*[14], the Supreme Court held that the real test of the judicious exercise of dismissing a case on the ground of non prosequitur, is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, the courts should consider lesser sanctions which would still amount to achieving the desired end. The above mentioned circumstances are wanting in this case. The two times that Marilou Bernardes-Lucente (plaintiff-appellant) and counsel failed to attend the hearings should not be viewed as a scheme to delay the disposition of cases. There was no apparent pattern to delay the case as the period involved is much too short to conclude disinterest in pursuing the case. We rule that the court a quo should not have dismissed the case. Substantial justice in this instance can be best served if a full opportunity is given to both parties to litigate their dispute and submit the merits of their respective positions.[15]

Apropos to the ground cited in the assailed order that the writ of execution has long been implemented, it is of no moment. Section 16, Rule 39 of the Rules of Court provides, viz:

Section 16. Proceedings where property claimed by third person.-xxxxxxxxxx

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.

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In the case of Spouses Roberto Buado and Venus Buado, vs. Court of Appeals and, Romulo Nicol,[16] the Supreme Court had the occasion to interpret Section 16, Rule 39 of the Rules of Court:

Apart from the remedy of *terceria* available to a third-party claimant or to a stranger to the foreclosure suit against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor, a third-party claimant may also resort to an independent separate action, the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property. If a separate action is the recourse, a third-party claimant may also resort to an independent separate action, the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property. If a separate action is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ.

Verily, plaintiffs-appellants have all the right to institute a separate action to vindicate their claim, considering that they are not parties to the case (Civil Case No. B-0783) for Recognition and Support where the writ of execution is being enforced.

With regard to the second and fourth assigned errors, We find that these issues are best determined in the trial proper of this case.

IN VIEW OF THE FOREGOING, the instant appeal is hereby GRANTED and the assailed order is SET ASIDE. Let the case be REMANDED to the court a quo for further proceedings and to be decided with dispatch. No costs.

SO ORDERED.

Ingles,[*] and Lopez, JJ., concur.

[*] Per Office Order No. 13-14-GTI dated June 17, 2014 vice J. Delos Santos.

[1] Records, p. 109.

[2] Records, p. 109.

[3] Records, p. 120.

[4] Rollo, p. 69.

[5] Records, p. 122.

[6] Records, p. 102.

[7] Records, p. 107.

[8] Supra note 3.

[9] Shimizu Philippines Contractors, Inc., vs. Mrs. Leticia B. Magsalin, doing business under the trade name “karen’s trading,” FGU Insurance Corporation, Godofredo Garcia, Concordia Garcia, and Reynaldo Baetiong, G.R. No. 170026, June 20, 2012 citing the case of Producers Bank of the Philippines v. Court of Appeals, 396 Phil. 497 (2000).

[10] Records, pp. 110-116.

[11] Ibid.

[12] Records, p. 102.

[13] *Alonso v. Villamor*, 16 Phil. 315, July 26, 1910 cited in *Lim Tong Lim v. Philippine Fishing Gear Industries, Inc.*, G.R. No. 136448, November 3, 1999.

[14] G.R. No. 179556, February 13, 2009 citing the case of *Rizal Commercial Banking Corporation v. Magwin Marketing Corporation*, 450 Phil. 721, 741-742 (2003).

[15] *Bahia Shipping Services, Inc., et. al. v. Oscar P. Mosquera*, G.R. No. 153432, February 18, 2004.

[16] G.R. No. 145222, April 24, 2009 citing the case of *China Banking Corporation v. Spouses Ordinario*, G.R. No. 121943, 24 March 2003, 399 SCRA 430, 431.

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