

RODOLFO RODRIGO G. PLAZA, PETITIONER, VS. JUDGE EDGAR G. MANILAG, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, 10TH JUDICIAL REGION, BRANCH 33, OF BUTUAN ...

Ponente: LLOREN, J.

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LLOREN, J.:

Before Us is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the public respondent's November 11, 2011 Decision[1] on a Compromise Agreement and the October 3, 2012 Order[2] which denied petitioner's motion for reconsideration of the aforesaid Decision.

The facts as culled from the records:

On September 2, 1995, Democrito O. Plaza (Plaza) died intestate. To settle the estate of the said decedent, his heirs, on February 12, 1997, then executed and entered into an Extrajudicial Settlement of Estate and Partition of the Intestate Estate of Democrito O. Plaza.[3]

On September 1, 2010, Victor Vicente G. Plaza (Victor), one of the private respondents herein, filed a Complaint[4] for Specific Performance, Damages and Attorney's Fees against his mother, Valentina G. Plaza, and the rest of his co-heirs, including herein petitioner Rodolfo Rodrigo G. Plaza, to the estate of the late Plaza. In his complaint, Victor alleged that despite the execution of the Extrajudicial Settlement, his mother failed to deliver his share in the estate as agreed upon in the said Extrajudicial Settlement. Victor further asserted that his mother continues to have control over the estate properties including the shares adjudicated to the former by keeping and depriving him of the documents, titles and tax declarations, evidencing ownership thereof.

In their respective Answer,[5] both petitioner Rodolfo and the rest of the defendants claimed, among others, that plaintiff Victor failed to pay the proper filing fees because the proper cause of action of the latter was for partition under Rule 69 of the Rules of Court; that the basis for the payment of the filing fees should be the total value of the properties as mentioned in the Extrajudicial Settlement. Both petitioner Rodolfo and the rest of the defendants then claimed that the public respondent did not acquire jurisdiction over the case filed by Victor as the latter failed to pay the proper docket fees.

Private respondents, however, further alleged in their Answer that petitioner Rodolfo is no longer an indispensable party in the case because the latter had already assigned and waived his entire share in the estate properties to Valentina G. Plaza.[6]

During the course of the trial, defendants except Rodolfo Rodrigo Plaza filed a Motion for Authority to Sell a Property Subject of this Litigation.[7] In their Motion, defendants alleged that SM Prime Holdings offered to purchase specific parcels of land mentioned in the Extrajudicial Settlement.

Petitioner Rodolfo opposed the above motion.[8] He alleged that there is a need for the public respondent to resolve the issue of lack of jurisdiction for failure to pay the proper docket fee before proceeding to act and

exercise jurisdiction over the case.

Later on, plaintiff Victor and the defendants (hereinafter called private respondents), except Rodolfo, filed a Joint Motion to Approve Partial Compromise.[9] In the said Compromise Agreement, private respondents alleged that they have mutually agreed to sell certain parcels of land included in the Extrajudicial Settlement to SM Prime Holdings.

Petitioner Rodolfo opposed the Joint Motion to Approve Partial Compromise.[10] He reiterated his previous argument that issues of jurisdiction, determination of the nature and character of the case, and the payment of the correct amount of docket fees, among others, should first be resolved by the public respondent before granting the said Joint Motion.

On November 10, 2011, public respondent issued the assailed Decision[11] approving the Compromise Agreement. The dispositive portion reads:

WHEREFORE, finding the Partial Compromise Agreement to be not contrary to law, morals, good customs, public policy and order, the Court hereby APPROVES the same as a PARTIAL JUDGMENT in this case insofar as the subject real properties involved therein is concerned, and enjoins the parties therein to faithfully comply with the terms and condition therein set forth, otherwise, any breach or default thereof may cause the issuance of a writ of execution.

SO ORDERED.

A Motion for Reconsideration[12] was filed by petitioner Rodolfo alleging that the issues of jurisdiction, among others, should have been resolved by the public respondent before approving the Compromise Agreement.

In an Order[13] dated October 3, 2012, public respondent denied the Motion for Reconsideration filed by petitioner Rodolfo. Public respondent ruled as follows:

The motion for reconsideration filed by defendant Rodolfo Rodrigo Plaza, as well as his earlier opposition to the motion for authority to sell a property subject of this litigation lack merit.

It is a settled jurisprudence that what determines the nature of an action as well as which court or body has jurisdiction over it are the allegations in the complaint and the character of the reliefs sought, whether or not plaintiff is entitled to any and all of the reliefs prayed for. The jurisdiction of the court or tribunal over the nature of the action cannot be made to depend upon the defenses set up in the answer or upon the defenses set up in the answer or upon a motion to dismiss, otherwise the question of jurisdiction would depend almost entirely on defendant (De la Rosa vs. Roldan, G.R. No. 133882, September 2, 2006).

A perusal of the complaint shows that the allegations therein clearly make out a case for specific performance, that is, to compel the defendants to deliver to plaintiff his 1/12[th] share in the co-owned property pursuant to the extra-judicial settlement.

An action for specific performance is one generally considered incapable of pecuniary estimation (Russel vs. Vestil, 304 SCRA 739).

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Hence, the instant action for specific performance falls within the exclusive original jurisdiction of the Regional Trial Court. This Court, being a Regional Trial Court, therefore has exclusive jurisdiction over the present action for specific performance. As the allegations of the complaint clearly show that the present action is one for specific performance and not for partition under Rule 69 of the Rules of Court, defendant Rodolfo Rodrigo Plaza's contention that the correct docket fees were not paid, therefore, is misplaced. The record will show that upon the filing of the complaint for specific performance on October 7, 2010, the same was properly

assessed by the Office of the Clerk of Court in the sum of P515,120.20 as the correct docket fees. With the payment of the correct docket fees, this Court is without any legal impediment to exercise its jurisdiction over this case.

On the other hand, it is a settled doctrine that a decision based on a compromise agreement has the effect of res judicata and is immediately executory. The joint motion to approve partial compromise only pertains to the plaintiff and the other defendants, except defendant Rodolfo Rodrigo Plaza. Hence, defendant Rodolfo Rodrigo Plaza has no personality to impugn the said agreement, he not being a party thereto. Being not a party to the said partial compromise, defendan(n)t Rodolfo Rodrigo Plaza cannot raise and assail the legality and validity of the subject Decision approving the same since it does not bind or affect him at all.

Aggrieved by the ruling of the public respondent, petitioner Rodolfo Rodrigo interposed the present petition with the following assignment of issues:

I.

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION (NOVEMBER 11, 2011) AND ORDER (OCTOBER 3, 2012) AFTER HE REFUSED TO DISMISS THE COMPLAINT FOR SPECIFIC PERFORMANCE EVEN IF IT DID NOT STATE A CAUSE OF ACTION AS THE CASE IS ACTUALLY ONE FOR PARTITION UNDER RULE 69;

II.

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION (NOVEMBER 11, 2011) AND ORDER (OCTOBER 3, 2012) PARTIALLY DISPOSING THE ESTATE OF DEMOCRITO O. PLAZA IN THE ORDINARY CIVIL ACTION FOR SPECIFIC PERFORMANCE;

III.

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION (NOVEMBER 11, 2011) AND ORDER (OCTOBER 3, 2012) WHEN IT HAD NO JURISDICTION OVER SPECIAL CIVIL ACTION FOR PARTITION FOR NON-PAYMENT OF THE CORRECT AND PROPER DOCKET AND FILING FEES;

IV.

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION (NOVEMBER 11, 2011) AND ORDER (OCTOBER 3, 2012) WITHOUT RESOLVING THE PRELIMINARY ISSUES RAISED; and

V.

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION (NOVEMBER 11, 2011) AND ORDER (OCTOBER 3, 2012) CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE.[14]

The crux of the issues is whether the public respondent committed grave abuse of discretion in the determination of the nature of the case.

Petitioner Rodolfo posits that the case before the public respondent is actually a case for Partition under Rule 69 of the Rules of Court and not one for specific performance. The case allegedly involves a document executed by all the heirs intended for partition but was however not enforced. Prior to the filing of the case, plaintiff therein (Victor) had sent substantially the same demand letters for partition and urging that they divide the properties by virtue of the deed. Moreover, plaintiff even prayed for the delivery to all the parties, not only to himself, all their shares and the fruits thereof in accordance with the extrajudicial settlement.

As the cause of action as alleged in the complaint is one for partition, and from subsequent pleadings known that distribution from said Extrajudicial Settlement could only be materialized through an action for partition, public respondent clearly abused his discretion amounting to lack or excess of jurisdiction when he refused to dismiss the complaint for lack of cause of action for specific performance.

Even if specific performance was the appropriate action filed, public respondent still had no authority to act on the Motion for Authority to Sell and the Joint Motion to Approve Partial Compromise since it was not acting as a partition court but one litigating an ordinary civil case which is subject to specific prescribed rules in special proceedings.

Considering that the case is one for partition, the appropriate and correct filing fees for an action for partition have to be assessed and paid before the trial court could acquire jurisdiction over the subject matter of the action and exercise jurisdiction accordingly.

Petitioner Rodolfo further posits that there were preliminary matters raised as Special and Affirmative Defenses in his Answer such as lack of cause of action and lack of jurisdiction over the action for failure to pay the correct docket fees. The other defendants (some of the private respondents herein) have also raised the same affirmative defenses, among others. Public respondent should have, at the very least, resolve such preliminary matter before even proceeding to act on the case and issue the assailed Decision and Order.

We are not persuaded.

It is axiomatic that the nature of the action – on which depends the question of whether a suit is within the jurisdiction of the court – is determined solely by the allegations in the complaint and the law at the time the action was commenced. Only facts alleged in the complaint can be the basis for determining the nature of the action and the court's competence to take cognizance of it. One cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.[15]

In the case at bar, the allegations in the complaint plainly show that Victor's cause of action is breach of contract. The pertinent portion of the complaint recites:

- On February 12, 1997, in order to fully and finally settle the intestate estate of the Decedent, his heirs, including plaintiff and defendants herein, entered into an Extrajudicial Settlement and Partition of the Intestate Estate of Democrito O. Plaza (the "Extrajudicial Settlement"), a copy of which is attached as Annex B.

15.1 In the Extrajudicial Settlement, the widow of Democrito O. Plaza, herein defendant Valentina G. Plaza, collected her conjugal partnership share and her own share as surviving spouse by adjudicating unto herself choice real and personal properties as well as cash.

15.2 On the other hand, the Twelve (12) children of Democrito O. Plaza, including plaintiff and the other

defendants herein, adjudicated the ownership of each of the Properties listed in Schedule 1 attached as Annex C (the "Co-Owned Properties"), among others, to themselves in Twelve (12) equal shares.

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- Despite the execution of the Extrajudicial Settlement and defendant Valentina G. Plaza's irrevocable waiver and renunciation of any and all other rights or claims of whatever nature and kind she may have over the Co-Owned Properties in favor of her co-heirs, she has failed to deliver to plaintiff his One Twelfth (1/12) share in each of the Co-Owned Properties as agreed upon in the Extrajudicial Settlement.

18.1 Defendant Valentina G. Plaza has not transferred the titles and tax declarations of the Co-Owned Properties, which are registered or declared in the name of the Decedent and/or defendant Valentina G. Plaza, to plaintiff and the other children of the Decedent.

18.2 Defendant Valentina G. Plaza continues to have control over the Co-Owned Properties including the shares adjudicated to plaintiff by keeping to herself, and depriving plaintiff access to, the documents evidencing ownership thereof.

18.3 Defendant Valentina G. Plaza continues to have sole benefit from the Co-Owned Properties by leasing out some of the Co-owned Properties and appropriating for herself the fruits thereof without accounting therefor to the owners in violation of Art. 441 of Republic Act No. 386.

- While defendant Valentina G. Plaza has took it upon herself to manage the Co-Owned Properties, keeping in her possession the certificates of title, tax declarations and other documents evidencing the parties' ownership thereof, she has denied plaintiff information regarding the Co-Owned Properties and its fruits as well as prevented access to the certificates of title, tax declarations and other documents evidencing the parties' ownership thereof.

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- In view of defendants' unjustified refusal to abide by and to deliver to plaintiff his One Twelfth (1/12) share in each of the Co-Owned Properties as agreed upon in the Extrajudicial Settlement, plaintiff suffered moral damages, and, for the protection of the public, exemplary damages should be assessed against defendants, both in such amount as may be proven during the trial.[16]

It is settled that a breach of contract is a cause of action either for specific performance or rescission of contracts. Further actions for specific performance are incapable of pecuniary estimation and therefore fall under the jurisdiction of the Regional Trial Court as provided under Sec. 19 of BP Blg. 129. Here, the averments in the complaint reveal that the suit filed by Victor was primarily for specific performance as it was aimed to enforce his rights over the One Twelfth (1/12) of the co-owned properties and to compel the defendants to deliver the said share to the former pursuant to the Extrajudicial Settlement.

Contrary to the allegation of petitioner Rodrigo, the case before the public respondent is not one for special proceedings. A special proceeding is a remedy by which a party seeks to establish a status, a right or a particular fact. An ordinary civil action, on the other hand, is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.[17] A perusal of the complaint of Victor would readily reveal that the latter was not praying to be declared as an heir of the late Democrito O. Plaza or for the establishment of any right or particular fact. As above stated, the complaint of Victor calls for the enforcement of his right over the Extrajudicial Settlement; an action which falls under an ordinary civil action. The public respondent, in the exercise of its general jurisdiction, cannot be restrained from taking cognizance of Victor's Complaint as the issues raised and the prayers indicated therein are matters which need not be threshed out in a

special proceeding.

Anent the allegation that the public respondent committed grave abuse of discretion when it failed to conduct a preliminary hearing on the special and affirmative defenses raised by defendants, this Court finds the same to be without merit.

In *Municipality of Biñan vs. Court of Appeals*[18] decided under the old Rules of Court, the Supreme Court held that a preliminary hearing permitted under Section 5, Rule 16 is not mandatory even when the same is prayed for. It rests largely on the sound discretion of the court, thus:

SEC. 5. Pleading grounds as affirmative defenses.- Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The use of the word “may” in the aforequoted provision shows that such a hearing is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.[19]

Such interpretation is now specifically expressed in the 1997 Rules of Civil Procedure. Section 6, Rule 16 provides that a grant of preliminary hearing rests on the sound discretion of the court, to wit-

SEC. 6. Pleading grounds as affirmative defenses.- If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

Based on the foregoing, a preliminary hearing undeniably is subject to the discretion of the trial court. Absent any showing that the trial court had acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction, as in the present case, the trial court’s order granting or dispensing with the need for a preliminary hearing may not be corrected by certiorari.

Moreover, such issue is now moot and academic as the public respondent in an Order dated October 3, 2012 aptly resolved the preliminary matters raised by the defendants.

Without necessarily prejudging the merits of the main case which is still pending before the public respondent, this Court is of the opinion that petitioner Rodolfo has no more claims over the property subject of the Compromise Agreement and to the entire estate of the late Democrito O. Plaza. The following notarized documents would show that petitioner Rodolfo had already waived his rights over the estate of his late father in favor of his mother and of his siblings, to wit:

- a) Waiver and Assignment of All Rights and Interests in the Estate of D.O. Plaza by Rodolfo Rodrigo G. Plaza;[20]
- b) Waiver and Assignment of All Rights and Interests in the Plaza Family-Owned Corporations;[21] and
- c) Waiver and Assignment of All Rights and Interests in the Properties where Assignor is a Co-Owner.[22]

With such waiver of his rights in the estate of the late Democrito O. Plaza, petitioner Rodolfo can no longer be considered as a real party in interest in a case which calls for the enforcement of the Extrajudicial Settlement of the said decedent. It is settled that a real party in interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof. Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.[23]

A special civil action for certiorari, under Rule 65, is an independent action based on the specific grounds therein

provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for certiorari will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[24] Unfortunately for petitioner Rodolfo, such is not the case here.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DENIED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Lopez and Inting, JJ., concur.

[1] Rollo, pp. 35 - 39

[2] Id, pp. 47 - 49

[3] Rollo, pp. 281 - 292

[4] Id, pp. 50 - 57

[5] Id, pp. 58 – 64; pp. 68 - 74

[6] Id, p. 59

[7] Id, pp. 76 - 86

[8] Id, pp. 87 - 96

[9] Rollo, pp. 116 - 121

[10] Id, pp. 122 - 125

[11] Id, pp. 35 - 39

[12] Id, pp. 40 - 45

[13] Id, pp. 47 - 49

[14] Rollo, p. 15

[15] Spouses Cruz vs. Spouses Cruz, G.R. No. 172217, September 18, 2009

[16] Rollo, pp. 52 - 55

[17] Ching vs. Rodriguez, G.R. No. 192828, November 28, 2011

[18] G.R. No. 94733, February 17, 1993

[19] Caltex (Philippines), Inc. v. Court of Appeals, G.R. No. 97753, August 10, 1992

[20] Rollo, pp. 344 - 345

[21] Id, pp. 361- 364

[22] Id, PP. 357 - 360

[23] Reyes vs. Enriquez, G.R. No. 162956, April 10, 2008

[24] Fajardo v. Court of Appeals, G.R. No. 157707, October 29, 2008

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