

JUANITA TAN, PLAINTIFF-APPELLANT, VS. SY CHIM, DEFENDANT-APPELLEE.

Ponente: CRUZ, J.

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CRUZ, J.:

THE CASE

This is an appeal taken from the Orders dated May 3, 2011 and July 29, 2011, respectively, both issued by the Regional Trial Court (RTC) of Manila, Branch 173, in Civil Case No. 04-111304 for damages, the dispositive portion of which reads, as follows:

(a) Order[1] dated May 3, 2011

X X X

"In view thereof, said manifestation and motion to dismiss having a leg to stand on, the same is GRANTED.
The instant action is hereby DISMISSED.

"SO ORDERED."

X X X

(b) Order[2] dated July 29, 2011

X X X

"In view thereof, the Motion for Reconsideration having no leg to stand on is hereby DENIED.

"SO ORDERED."

X X X

THE ANTECEDENTS

On November 4, 2004, Juanita Tan, as plaintiff, filed with the RTC of Manila a complaint against Sy Chim denominated as one for damages with Writ of Preliminary Attachment and docketed as Civil Case No. 04-111304. Before an answer was filed by defendant, plaintiff filed an Amended Complaint[3] alleging that Defendant Sy Chim was formerly the President of Sy Siy Ho & Sons, Inc., (SSHSI) doing business under the name and style "Guan Yiac Hardware", while plaintiff is the Treasurer of SSHSI.

Plaintiff alleged that sometime on May 6, 2003, a Complaint for Accounting and Damages was filed by SSHSI against Sy Chim and his wife Felicidad Chan Sy. The Complaint, docketed as Civil Case No. 03106456, was raffled to Branch 46 of the RTC of Manila.

Pending resolution of the said Complaint, Sy Chim and Felicidad Chan Sy filed with the Office of the City Prosecutor of Manila a criminal complaint against Plaintiff Juanita Tan and others for violation of Section 74 of the Corporation Code in relation to Section 144 of the Corporation Code and perjury. The criminal complaint was docketed as I.S. No. 03E-15285 and 03E-15286.

After the preliminary investigation, a Resolution[4] dated December 29, 2003[5] was rendered by Assistant City Prosecutor Bernardino L. Cabiles dismissing the criminal complaint, thus:

x x x

"WHEREFORE, it is recommended that the charges of perjury and falsification, in I.S. No. 03E-15287 and 03E-15288 be dismissed due to lack of merit and the resolution of the charges of Violation of Section 74 of the Corporation Code, on I.S. No. 03E-15285 and 03E-15286, be suspended in view of the pendency between the parties of a prejudicial question in Civil Case No. 03106456 before the Regional Trial Court, Manila, Branch 46."

x x x

Sy Chim moved for a reconsideration of the said Resolution but the same was denied by the Office of the City Prosecutor of Manila, through 2nd ACP Jose Torres Tan, Jr. in the Resolution[6] dated June 14, 2004. Sy Chim appealed before the Department of Justice (DOJ) through a Petition for Review but the same was similarly dismissed.[7]

Plaintiff then alleged that, despite the finality of the DOJ Resolution, Defendant Sy Chim still continued to discredit the reputation, character, integrity and honesty of plaintiff, which constrained her to file the complaint for damages. She alleged that the malicious filing of the criminal complaint against her denied her guaranteed net earning of several million pesos and that, as a consequence of the filing of the said criminal complaint, she suffered mental anguish, moral anxiety, sleepless nights and besmirched reputation that warrants the award of moral damages and exemplary damages. She was also constrained to hire the services of a legal counsel to defend her in court, incurring expenses for attorney's fees.

Ultimately, plaintiff asked for the following reliefs, to wit:

x x x

"3. After hearing, judgment be rendered to ORDER defendant SY CHIM to pay:

3.1. P9,000,000.00 as a fair, just and reasonable amount Plaintiff has been guaranteed to earn had defendant did not file the malicious criminal complaint;

3.2 P200,000.00 Plaintiff had paid counsel for the preparation of Plaintiff defense and appearances in defendant the criminal complaint Sy Chim filed against Plaintiff and P200,000.00 which Plaintiff agreed to pay counsel in the preparation filing of this complaint and prosecuting the same in Court;

3.3 The amount of P1,000,000.00 as just, fair and reasonable compensation for the moral damages Plaintiff has suffered by reason of the filing by defendant of the criminal complaint against Plaintiff;

3.4 The amount of P500,000.00 by way of exemplary damages to deter others from following the unethical and malicious acts of defendant in filing a criminal complaint without factual/legal basis;

3.5 To pay Plaintiff the amount of P5,000.00 as Attorney's fees in his daily appearance in Court as the case is set for deliberation;

3.6 To pay the cost of suit.

x x x

Defendant Sy Chim filed a Motion to Dismiss[8] dated January 26, 2005 on the ground of failure to state cause of action and lack of cause of action. The RTC denied the motion through a Resolution[9] dated November 14, 2006. Their motion for reconsideration of the said Order was likewise denied by the RTC.[10]

In the meantime, the defendant filed a Petition for Certiorari before Us questioning the DOJ Resolution dismissing the criminal complaint against plaintiff. On May 31, 2006, We promulgated a Decision[11] in connection with the criminal complaint filed by defendant against plaintiff, the dispositive portion of which reads:

X X X

"UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench is hereby GRANTED. The Office of the City Prosecutor of Manila is ORDERED to file the appropriate information against private respondents for violation of Section 74 in relation to Section 144 of the Corporation Code. It is also ordered to file the appropriate informations against private respondents for violation of Article 172 and Article 183 of the Revised Penal Code. Without costs in this instance.

"SO ORDERED."

X X X

The motion for reconsideration filed by private respondents therein, which includes plaintiff herein, was denied for lack of merit through a Resolution dated August 8, 2006.

Defendant filed his Answer with Counterclaim[12] dated September 24, 2007 in Civil Case No. 04-111304, alleging that the Amended Complaint is a case for damages for malicious prosecution, the requisites of which are not present in this case. He argues that the first requirement, that the plaintiff in the malicious prosecution case must have been acquitted, is not present in this instance, since this Court's Special Ninth Division issued the Decision dated May 31, 2006 finding probable cause of violation of the Corporation Code, specifically Section 74 thereof, with respect to Section 144, and ordering the filing of an Information against the respondents in I.S. No. 03E-15285, which includes plaintiff. The second requirement that the defendant in the malicious prosecution case must have acted without probable cause is likewise not true in this instance because of the said finding of probable cause by this Court. The third requirement, that the defendant in the malicious prosecution case must have been actuated or impelled by legal malice, is also not present based on the same reason.

Before a pre-trial was held, defendant's counsel moved for the suspension of the proceedings in view of the pendency of a Petition for Certiorari he filed with Us in connection with the RTC's denial of his Motion to Quash/Set Aside/Discharge (re: 22 December 2004 Writ of Attachment) and his Motion to Dismiss dated January 26, 2005. The motion to suspend was granted by the RTC through the Order[13] dated February 5, 2008.

After a long interregnum, the RTC issued an Order[14] dated July 7, 2010 directing the parties to submit themselves before the Philippine Mediation Center.

Plaintiff filed her Manifestation[15] dated July 29, 2010 stating that Defendant Sy Chim had died in December 2008.

Counsel for Defendant Sy Chim filed a Manifestation and Motion to Dismiss[16] dated April 6, 2010 stating that he was just informed that his client has already passed away on December 15, 2008. In view of which, it was prayed that the complaint for damages arising from malicious prosecution be dismissed, not being an action that survive the death of the defendant. He also mentioned important supervening events that would justify the outright dismissal of the case, i.e., the Supreme Court Decision dated March 30, 2009 rendered in G.R. No. 174168 entitled "Sy Tiong Shiou, Juanita Tan Sy, Jolie Ross Tan, Romer Tan, Charlie Tan and Jessie James Tan v. Sy Chim and Felicidad Chan Sy" ruling that there was probable cause in the criminal complaint filed by Defendant Sy Chim against, among others, Plaintiff Juanita Tan.

The RTC, in the assailed Order dated May 3, 2011, granted defendant's Manifestation and Motion to Dismiss, ruling that:

x x x

"In as much as the instant action is a civil complaint for damages for the malicious prosecution of the criminal complaint filed by plaintiff which does not survive with the death of said defendant before any judgment could be rendered by this Court, the claim being not one (1) of those mentioned in Section 21, Rule 3 of the Rules of Court which states that:

'Where claim does not survive - When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules.'

the civil action is therefore extinguished.

"With more reason that with the finding of probable cause by the decision of the Supreme Court in the criminal complaint filed by the defendant Sy Chim against herein-plaintiff Juanita Tan, there is no more malicious prosecution to speak of."

x x x

Plaintiff filed a Motion for Reconsideration[17] stating that her action is one for damages for acts which constitute grave abuse of right vis-à-vis Article 19 of the Civil Code, and not one for malicious prosecution. The RTC denied said motion through its Order dated July 29, 2011.

Plaintiff then filed a Notice of Appeal which was given due course by the RTC through the Order dated September 2, 2011. Hence, this appeal.

THE ASSIGNED ERRORS

Plaintiff, as Our appellant, raised the following errors in her Appellant's Brief, to wit:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE COMPLAINT IS FOR MALICIOUS PROSECUTION WHICH DOES NOT SURVIVE UPON THE DEATH OF THE DEFENDANT.

II

THE TRIAL COURT ERRED IN DISMISSING THE CASE DESPITE THE FACT THAT THE ACTION SURVIVES EVEN AFTER THE DEATH OF THE DEFENDANT.

III

THE TRIAL COURT ERRED IN DENYING PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION.

Plaintiff-appellant summarized the errors into one statement of issue, viz.:

WHETHER OR NOT THE ACTION SURVIVES DESPITE THE DEATH OF THE APPELLANT.

As for defendant-appellee, by counsel, the following arguments were raised, to wit:

A. The appeal should be dismissed because plaintiff-appellant availed of the wrong mode of appeal. Plaintiff-appellant raised in her brief a pure question of law - i.e., the effect of the death of defendant-appellee on the claim for damages filed by plaintiff-appellant - which should be appealed by way of a petition for review on certiorari under Rule 45 of the revised rules of court, and not by ordinary appeal under Rule 41.

B. The appeal should be dismissed because plaintiff-appellant's claim for damages had been extinguished by the death of defendant-appellee. Thus, the lower court did not err in dismissing the complaint.

C. The lower court correctly dismissed the amended complaint. There was no basis for plaintiff-appellant's

claim for damages on the ground of malicious prosecution after the Supreme Court ruled in G.R. 174168 entitled *Sy Tiong Shiou v. Sy Chim* that there was probable cause for the criminal complaints filed by defendant-appellee against plaintiff-appellant.

D. The appeal must be dismissed for the additional reason that plaintiff-appellant failed to make page references to the record in her appeal brief, as required under Section 13, Paragraphs (c), (d) and (f), Rule 44 of the Revised Rules of Court.

OUR RULING

We will first deal with the procedural niceties raised by defendant-appellee, i.e., the present appeal is an improper mode of appeal.

Section 2, Rule 41 of the Rules of Court provides:

x x x

"Section 2. Modes of appeal.

(a) Ordinary appeal.- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

x x x

(c) Appeal by certiorari.- In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45."

x x x

If the aggrieved party appeals by writ of error under Rule 41 of the Rules of Court to Us and it turns out, from the brief of appellant, that only questions of law are raised, the appeal shall be dismissed,[18] as can be gleaned from Section 2, Rule 50 of the Rules of Court, to wit:

x x x

"Section 2. Dismissal of improper appeal to the Court of Appeals. - An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

"An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright."

x x x

This Court can only take cognizance of appeals raising questions of fact. If the questions raised were purely questions of law, the appeal is reviewable only by the Supreme Court through a Petition for Review on Certiorari.

A question of fact exists when a doubt or difference arises as to the truth or falsity of alleged facts. If the query requires a reevaluation of the credibility of witnesses or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. On the other hand, there is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances.[19]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence.[20] The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[21] If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.[22]

The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[23]

The nature of the issues to be raised on appeal can be gleaned from the appellant's notice of appeal filed in the trial court and in his or her brief as appellant in the appellate court.[24]

A perusal of plaintiff-appellant's assigned errors as well as her encapsulation of the sole issue in this appeal shows that what was only raised in the appeal are pure questions of law. This is likewise obvious from the short joint discussion made by plaintiff-appellant in her brief, reproduced below, as follows:

x x x

"The above-assigned errors and stated issue being interrelated are jointly discussed/argued hereunder:

1. Rule 3 of the 1997 Rules of Civil Procedure provides:

'Section 16. Death of party; duty of counsel. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court x x'

'The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.'

'The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.'

2. The Rule does not state when 'the claim is not thereby extinguished'. However, plaintiff-appellant respectfully submits that since the instant action is not purely personal to the defendant, the action survives and should continue. The instant action is in reality one for damages for grave abuse of rights vis-à-vis violation of Article 19 of the Civil Code or one for injury to the person and property of the plaintiff. As much, the claim is not extinguished by the death of the defendant during pendency of the case, and the action SURVIVES and shall continue. The heirs or legal representatives of the defendant must be substituted. If the judgment is against the defendant and has become final and executory, said judgment is actually for money where the remedy of the plaintiff is to file the judgment as money claim in the estate proceedings for the settlement of the estate of the deceased, using the judgment as proof of the basis of such claim, and if there is yet no such estate proceedings, plaintiff may initiate it and file his claim therein. If the defendant dies after entry of the final judgment against him and after levy was made on his property, the judgment shall be enforced by proceeding with the sale of his levied property (Rule 39, Sec. 7[c]).

3. Rule 87, Section 1 of the Rules of Court enumerates actions that survives (sic), and one of them is 'actions to recover damages for an injury to a person or property.' This action may be considered as one for injury to property, one which is not limited to injuries of specific property, but extends to other wrongs by which personal estate is injured or diminished. (Board of Liquidators v. Kalaw, 20 SCRA 987, 1000). The instant suit to recover damages, based on the alleged tortious acts of the defendant as pleaded in the complaint, survives, despite his death.

4. The case of *Climaco v. Uy*, 19 SCRA 858, relied upon by the defendant and the trial court, was decided under and in light of the old Rule when money claim did not survive upon the death of the defendant. Under the present Rule, money claims survive as stated above, although the judgment against the deceased defendant can only be enforced in the estate proceedings for the settlement of his estate if no levy has yet been made on his properties before his death." (emphasis on the original)

x x x

Apparent from the afore-quoted discussion that no questions of fact were ever brought up by plaintiff-appellant. What she only questions in her appeal is the RTC's finding that her complaint is one for malicious prosecution which led the said court to dismiss her complaint for not having survived the death of the defendant.

What plaintiff-appellant impugns is the determination by the RTC of the nature of action filed. Such a determination as to the correctness of the conclusions drawn from the pleadings undoubtedly involves a question of law,[25] cognizable only by the Supreme Court.

Having resorted to an improper mode of appeal, and pursuant to Section 2, Rule 50 of the Rules of Court, this appeal should be dismissed.

WHEREFORE, premises considered, the appeal is DISMISSED for being improper. The Orders dated May 3, 2011 and July 29, 2011, respectively, issued by the Regional Trial Court of Manila, Branch 173, in Civil Case No. 04-111304 are hereby AFFIRMED.

SO ORDERED.

Abdulwahid, (Chairperson), and Barza, JJ., concur.

[1] Rollo, pp. 25-26.

[2] *Id.*, pp. 27-28.

[3] Record, Vol. 1, pp. 188-195.

[4] *Id.*, pp. 42-49.

[5] The date of the Resolution indicated in the Amended Complaint is October 16, 2003, which appears to be erroneous.

[6] Record, Vol. 1, pp. 51-57.

[7] See Resolution at Record, Vol. 1, pp. 58-61.

[8] Record, Vol. 1, pp. 368-381.

[9] *Id.*, pp. 407-408.

[10] Order dated August 21, 2007, at Record, Vol. 1, p. 459.

[11] Record, Vol. 1, pp. 422-446.

[12] *Id.*, pp. 460-476.

[13] Record, Vol. 2, p. 473.

[14] *Id.*, pp. 881-883.

[15] *Id.*, pp. 884-885.

[16] *Record*, Vol. 2, pp. 887-895.

[17] *Id.*, pp. 937-938.

[18] *First Bancorp, Inc. v. Hon. Court of Appeals*, G.R. No. 151132, June 22, 2006.

[19] *Id.*, citing *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 298.

[20] *Microsoft Corp. and Lotus Development Corp. v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004, citing *Arroyo, et al. v. El Beaterio del Santissimo Rosario De Molo, et al.*, 132 Phil. 9 (1968).

[21] *Id.*, citing *Cheesman v. Intermediate Appellate Court*, G.R. No. 74833, 21 January 1991, 193 SCRA 93.

[22] *Id.*, citing *Bernardo v. Court of Appeals*, G.R. No. 101680, 7 December 1992, 216 SCRA 224.

[23] *Cucueco v. Court of Appeals, et al.*, *supra.*, citing *China Road and Bridge Corporation vs. Court of Appeals*, G.R. No. 137898, December 15, 2000, 348 SCRA 401, 411.

[24] *First Bancorp, Inc. v. Hon. Court of Appeals*, *supra.*, citing *Tamondong v. Court of Appeals*, G.R. No. 158397, November 26, 2004, 444 SCRA 509, 517.

[25] *Korea Exchange Bank v. Filkor Business Integrated, Inc., et al.*, G.R. No. 138292, April 10, 2002, citing *Martin*, *Rules of Court of the Philippines*, Vol. 1, 945 (1989 ed.).

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