REQUEST FOR CONSOLIDATION OF CIVIL CASE NO. R-1169, RTC-BR. 45, SAN JOSE, OCCIDENTAL MINDORO WITH CIVIL CASE NO. 3640, RTC-BR. 49, CABANATUAN CITY.

A.M. No. 00-7-299-RTC. August 31, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This resolves the Compliance and Request filed by Danilo R. Padiernos, plaintiff in Civil Case No. R-1169, RTC-Br. 49, San Jose, Occidental Mindoro, through his counsel Atty. Renato A. Martinez, pursuant to our Resolution of 21 February 2001 requiring plaintiff to explain why he should not be declared in contempt for forum shopping. The antecedents follow:

On 14 October 1999 Danilo R. Padiernos filed a Complaint against Pilar Alarcon-Paja "For: Declaration of Nullity of Title with Damages," docketed as Civil Case No. 3640 and raffled to RTC-Br. 29, Cabanatuan City.

On 29 October 1999 the same Danilo R. Padiernos filed another complaint against the same Pilar Alarcon-Paja "For: Annulment of Contract with Damages," docketed as Civil Case No. R-1169 and raffled to RTC-Br. 45, San Jose, Occidental Mindoro.

On 11 February 2000 defendant Pilar Alarcon-Paja wrote a letter to the Court requesting that Civil Case No. R-1169 be transferred from RTC-Br. 45, San Jose, Occidental Mindoro, to RTC- Br. 29, Cabanatuan City, for consolidation since both cases allegedly involved the same parties, subject matter and issues.

On 2 March 2000, upon motion of defendant Pilar Alarcon-Paja, Judge Ubaldino Lacurom of RTC-Br. 29, Cabanatuan City, dismissed Civil Case No. 3640 for forum shopping and for failure to submit a cetificate of non-forum shopping as required in Sec. 5, Rule 7, 1997 Rules of Civil Procudure, specifically holding that -

> VIEWED from the foregoing, the Court believes that the acts of the plaintiff constitute a clear case of forum shopping.
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> Forum shopping has been characterized as an act of malpractice that is prohibited and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavy burdened dockets of the courts (Temple Export and Import Corp. v. CA, citation omitted).

On 2 June 2000 Danilo R. Padiernos filed a third Complaint again "For: Declaration of Nullity of Title with Damages," with the same allegations as those contained in his Complaint in Civil Case No. 3640. The new Complaint which was now accompanied with the proper certification of non-forum shopping was docketed as Civil Case No. 3789 and raffled to RTC-Br. 28, Cabanatuan City.

It is observed that all three (3) complaints were filed by Atty. Renato A. Martinez in behalf of plaintiff Danilo R. Padiernos.

On 26 July 2000 the Third Division of this Court granted defendant Pilar Alarcon-Paja's previous request to transfer Civil Case No. R-1169 from RTC-Br. 45, San Jose, Occidental Mindoro, to RTC-Br. 29, Cabanatuan City, after receiving the comment of Danilo R. Padiernos that he had no objection to such transfer.

On 19 September 2000 Judge Tomas B. Talavera of RTC-Br. 28, Cabanatuan City, dismissed Civil Case No. 3789 without prejudice. However, on 16 November 2000, upon motion of defendant Pilar Alarcon-Paja, Judge Talavera amended his 19 September 2000 order by declaring the dismissal to be with prejudice.[1]

On 11 January 2001 defendant Pilar Alarcon-Paja filed an Urgent Request informing the Court that Civil Case No. 3789 was pending before RTC-Br. 28, Cabanatuan City, and requesting that Civil Case No. R-1169 be transferred to Br. 28 instead of Br. 29.

On 1 February 2001 plaintiff Danilo R. Padiernos appealed the ruling of the RTC-Br. 28, Cabanatuan City[2] regarding the amended order of Judge Talavera dismissing the case with prejudice.

On 21 February 2001 the Court noted the urgent request of defendant Pilar Alarcon-Paja and ordered Danilo R. Padiernos to explain why he should not be declared in contempt for forum shopping.

In his Compliance and Request Danilo R. Padiernos claims that he should not be cited in contempt for forum shopping for the following reasons: (a) the causes of action in Civil Case No. 3789 and Civil Case No. R-1169 are not the same since Civil Case No. 3789, which is an action for declaration of nullity of title, is an action in rem, while Civil Case No. R-1169, which is an action for the annulment of a deed of assignment, is an action in personam; (b) since Civil Case No. 3640 was dismissed for failure to submit the requisite certification of non-forum shopping then such dismissal (according to Sec. 5, Rule 7, 1997 Rules of Civil Procedure) is without prejudice, consequently, the same action can be re-filed; (c) in his Complaint in Civil Case No. 3789 he disclosed the pendency of Civil Case No. R-1169 and the filing earlier of Civil Case No. 3640, thus proving that he had no intention to commit forum shopping; and, (d) he had no intention to mislead the courts for he honestly believed that his filing of the complaints was within the purview of the law. In his Compliance, he also requests for the retention of Civil Case No. R-1169 in San Jose, Occidental Mindoro.

The arguments of plaintiff Danilo R. Padiernos are hollow and devoid of merit.

If Civil Case No. R-1169 (for annulment of deed of assignment) and Civil Case No. 3789 (for declaration of nullity of title) were to be tried separately, then conflicting decisions can arise. Defendant Pilar Alarcon-Paja can be declared owner of the land in question, subject matter of Civil Case No. 3789, at the same time the deed of assignment she used for obtaining ownership thereof can be annulled in Civil Case No. R-1169. Such conflicting results can be disruptive of the orderly administration of justice.

It is also futile for plaintiff Danilo R. Padiernos to insist that the dismissal of Civil Case No. 3640 was without prejudice, which would therefore allow him to re-file the case since Sec. 5, Rule 7 of the 1997 Rules of Civil Procedure states -

> Sec. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofor commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

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> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions (emphasis and underscoring ours).

It is true that if the complaint is dismissed based on the failure to submit the proper certification of non-forum shopping, then the dismissal is without prejudice. However, if the dismissal is based on the clear existence of forum shopping, then such dismissal is with prejudice.

A perusal of the resolution of Judge Lacurom of RTC-Br. 29, Cabanatuan City, dismissing Civil Case No. 3640 shows that the dismissal was based on the clear existence of forum shopping. Thus -

> What also caught the attention of the Court is the fact that these two identical complaints were prepared by plaintiff's counsel on the same date (October 14, 1999). It is therefore very clear that from the very beginning the counsel for the plaintiff had already perceived of filing simultaneously two (2) suits before (2) two courts of concurrent jurisdiction x x x x
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> VIEWED from the foregoing, the Court believes that the acts of the plaintiff constitute a clear case of forum shopping.

It is therefore evident that the dismissal of Civil Case No. 3640 was with prejudice as it was based on the clear existence of forum shopping. The act of plaintiff Danilo R. Padiernos in filing Civil Case No. 3789, which is exactly the same action in Civil Case No. 3640, only reveals his intention to seek a better or sympathetic forum in pursuing his case. Even if he mentioned the pendency of Civil Case No. R-1169 and the previous filing of Civil Case No. 3640 in the Verification and Certification of his Complaint in Civil Case No. 3789, the fact remains that he tried to revive a case which had been previously dismissed with prejudice and which is closely related to a pending case before another court of concurrent jurisdiction. Merely enumerating and admitting the existence of related cases in the certification of non-forum shopping of a Complaint cannot exculpate a complainant who is obviously deliberately seeking a more friendly forum for his case.

As for complainant's counsel, Atty. Renato A. Martinez, it is quite obvious that he conspired with his client in filing three (3) complaints involving the same parties, issues and subject matter. Instead of aiding in the orderly administration of justice, the complaints filed in different fora only caused confusion among the trial courts. Hence, Atty. Martinez should be disciplined together with his client and the remaining two (2) cases (Civil Case No. R-1169 and Civil Case No. 3789) should be dismissed for forum shopping.

ACCORDINGLY, plaintiff Danilo R. Padiernos and his counsel, Atty. Renato A. Martinez, are declared in direct contempt of court for forum shopping and are ordered each to pay a fine of P5,000.00 and P10,000.00, respectively, within fifteen (15) days from receipt of this Resolution. Both Danilo R. Padiernos and Atty. Renato A. Martinez are warned that a repetition of the same or similar act will be dealt with more severely.

Consequently, for obvious forum shopping, Civil Case No. R-1169 and Civil Case No. 3789 are also DISMISSED. The request of plaintiff Danilo R. Padiernos for the retention of Civil Case No. R-1169 in San Jose, Occidental Mindoro, is NOTED WITHOUT ACTION in view of its dismissal herein.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] The reason for the dismissal of Civil Case No. 3789 was not stated in the Compliance and Request. Information regarding the current status of Civil Case No. 3789 was obtained from Compliance and Request submitted by plaintiff Danilo Padiernos.

[2] No record showing that Civil Case No. 3789 is now pending before the CA.

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