

DOROTEA, NENITA, ANTONIO AND EDWIN ALL SURNAMED GUEVARRA, PLAINTIFFS-APPELLANTS, VS. SPOUSES EMMANUEL AND SONIA GROSPÉ, DEFENDANTS-APPELLEES.

Ponente: BARRIOS, J.

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BARRIOS, J.:

REFrom the Order dated September 22, 2004 dismissing their complaint, the appellants Dorotea, Nenita, Antonio and Edwin, all surnamed Guevarra (or the Guevarras for brevity) interposed this appeal assigning these as the errors committed by the court a quo:

- THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT IN ITS ORDER OF SEPTEMBER 22, 2004 BECAUSE THE MOTION TO DISMISS ON LACK OF CAUSE OF ACTION HYPOTHETICALLY ADMITS THE MATERIAL ALLEGATIONS OF THE COMPLAINT;
- THE TRIAL COURT ERRED IN DISMISSING THE CASE FOR LACK OF CAUSE OF ACTION ON THE BASIS OF THE DEAD MAN'S STATUTE;
- THE TRIAL COURT ERRED IN DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION. (p. 15, rollo)

The Guevarras on February 9, 2001 filed before the Regional Trial Court of Malabon this dismissed case for Reconveyance and Damages against the appellees spouses Emmanuel and Sonia Grospe (or the Grosps unless referred to by their full names). They alleged in their complaint that their father Melencio Guevarra (or Melencio) acquired thru purchase a parcel of land identified as Lot 27, Blk. 26, Psd-498, GR. No. 4429 situated in the Barrios of Tinajeros and Tugatog in Malabon City with an area of 753 square meters. This lot was placed in the name of Melencio's mother Nicolasa Guevarra (or Nicolasa) under Transfer Certificate of Title No. 48773 of the Register of Deeds of Rizal as his trustee. Upon the death of Nicolasa, her children Melencio, Raymunda Praxides Pina (or Raymunda) and Sol Justina Pina (or Sol) partitioned the property on June 5, 1951. Their sister Sol was able to persuade Melencio and Raymunda to execute a simulated deed of sale dated June 5, 1951 to make it appear that they sold their 2/3 portion to her so that the other children of Nicolasa from her first marriage could not claim the property. Later Sol mortgaged the property to the Rural Bank of Malabon. Melencio died on September 11, 1984. Raymunda has been missing since 1981 while Sol died on December 24, 1996. Both never had a child, though Sol took in Sonia Grospe and another as wards.

After the death of Sol, Sonia Grospe made it appear that she had earlier sold the land to her on January 27, 1993 for P600,000.00. According to the Guevarras, this sale was fictitious because the Grosps did not have the money to buy the property; Sol had no right to sell this because it was not hers and belonged to Melencio; and the alleged sale was just a scheme to circumvent the laws of succession to allow Sonia Grospe to inherit although she was not legally adopted by Sol.

The Guevarras complaint was met with a Motion to Dismiss from the Grosps raising the following grounds:

- That plaintiffs and their counsel violated Sec. 5, Rule 7 of the 1997 Rules of Civil Procedure, on CERTIFICATION on Non-Forum Shopping;
- That the Complaint stated no cause of action and/or failed to state a cause of action;
- That the action is barred by PRESCRIPTION and/or the action is barred by ESTOPPEL and LACHES;
- That the Honorable Court has no JURISDICTION over the subject matter of the claim; (p. 14, record)

The Grospes stated that despite the earlier and pending case for ejectment which they filed against them, the Guevarras failed to state this fact in their complaint. This ejectment case is pending before the Court of Appeals on petition for review filed by the Guevarras who lost the case in the lower court and by which the property in litigation was adjudged in favor of the Grospes. Their failure to state this in their complaint is a violation of the rules of non-forum shopping.

The Grospes argued that there was no cause of action against them for there is no truth to the claim of falsification and because the proper party to question the sale should be the vendor Sol. The assertion of the Guevarras that the sale to Sonia Grospe was a forgery because by then Sol was already dead, is erroneous. At the time of the execution of the Deed of Sale in 1993, Sol was still alive and she died only in 1996. It is for Sol, and not the Guevarras, to repudiate the sale and she never did.

It was further alleged by the Grospes that if indeed the property was held in trust for Melencio, then the Guevarras are not the parties-in-interest but Melencio himself. To allow the Guevarras to present parol evidence to prove that there was an implied trust would be in violation of the Dead Man's Statute. Further, the Grospes raised prescription and laches. Responding, the Grospes filed their Comment and Opposition (pp. 63-67, record).

Resolving this incident, the court a quo issued the assailed Order granting the motion to dismiss, disposing that:

WHEREFORE, premises considered the instant complaint is hereby DISMISSED. (p. 78, record)

A motion for reconsideration was filed but this was denied in the court a quo's Order dated September 1, 2005 (p. 126, record).

The appeal is meritorious.

On the issue of the certificate of non-forum shopping, the essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment (*Mondragon Leisure and Resorts Corporation vs. United Coconut Planters Bank*, 427 SCRA 585). Though the earlier and instant suit may involve the same parties and the same property, they do not however involve the same cause of action. Any judgment in the ejectment case will not constitute *res judicata* to this case for reconveyance. It has been stated that while a petition may be flawed in its certificate of non-forum shopping, such procedural lapse may be overlooked in the interest of substantial justice (*Phil. Phosphate Fertilizer Corp. vs. CIR*, G. R. No. 141973, June 28, 2005). This is called for in this case.

It is elementary that in the determination of lack of cause of action raised in a motion to dismiss, the sufficiency of the facts alleged should be tested within the four corners of the complaint itself and without regard to opposing versions and evidence. No other matter should be considered; furthermore, the truth or falsity of the said allegations is beside the point for the truth thereof is deemed hypothetically admitted (*Antonio vs. Factoran*, G. R. No. 101083, July 30, 1993). On the basis of this jurisprudence, it can be said that the complaint states a cause of action.

Further, contrary to the declaration of the court a quo, this Court does not find proper the application of the Dead

Man's Statute. Sec. 23, Rule 130 of the New Rules of Civil Procedure states:

x x x Disqualification by reason of death or insanity of adverse party - Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

In any event what the Dead Man's Statute proscribes is the admission of testimonial evidence upon a claim which arose before the death of the deceased. The incompetency is confined to the giving of testimony (Sanson vs. Court of Appeals, 401 SCRA 349, 350), but does not encompass any and all kinds of evidence. It does not appear that the Guevarras would be relying solely on barred testimonial evidence to prove their claim, and for that matter, if they do this it could be invoked only when the prohibited testimony is presented. It was thus presumptuous and premature to dismiss the case on the basis of the assumed bar of the Dead Man's Statute. Also, in the above stated rule the prohibition applies to a case against the estate of the deceased person (Londres vs. Court of Appeals, 394 SCRA 133, 150). The instant suit however was not filed against the administrator of the estate, nor was it filed as a claim against the estate. Rather it was the heirs of the deceased Melencio who filed the complaint against the Grospe who are still warm bodies.

Likewise the ground of prescription is without merit. An action for reconveyance of property based on an implied trust prescribes in ten (10) years (Heirs of Ambrocio Kionisala vs. Heirs of Honorio Dacut, 378 SCRA 206). However if a person claiming to be an owner thereof is an actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property does not prescribe (Tan vs. Court of Appeals, 295 SCRA 247, 250). As against the Guevarras who admittedly have been and still are in possession of the lot, the suit for reconveyance has not prescribed.

WHEREFORE, the appeal is GRANTED and the Order appealed from is SET ASIDE. This case is ordered REMANDED to the court a quo for further proceedings.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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