

ANGELINA CHUA AND HEIRS OF JOSE MA. CHENG SING PHUAN, PETITIONERS, VS. HONORABLE VICTORINO O. MANIBA, JR., IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Assailed in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are the following resolution and order of the Regional Trial Court, Iloilo City, Branch 39 in Civil Case No. 03-27527, entitled *Spouses Santiago Cheng and Avelina Sihiyon vs. Angelina Chua and Heirs of Jose Ma. Cheng Sing Phuan*, to wit:

- The Resolution[1] dated January 27, 2012 denying the oral motion of petitioners to present additional witnesses other than those listed and named in the pre-trial order; and
- The Order[2] dated June 13, 2012 denying petitioners' motion for reconsideration of the assailed January 27, 2012 Resolution.

The facts of the case as culled from the records are as follows:

This case stemmed from a Complaint[3] for Partition and Damages filed by respondents *Spouses Santiago Cheng and Angelina Sihiyon* against *Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua* and *Spouses Teofilo Sing and Petra Cheng Sing*.

It was alleged in the complaint that the parties are the registered co-owners in equal shares of a parcel of land covered by Transfer Certificate of Title No. 2355-D. On the other hand, the improvements found on the said parcel of land consisting of a building and machinery (cereal mill) are co-owned by the *Spouses Santiago Cheng and Angelina Sihiyon* and *Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua*.

Respondents have demanded for the physical partition of the above properties inasmuch as the cereal mill were leased to *Spouses Cheng Sing Phuan and Angelina Chua* thereby depriving respondents of the income thereof. Petitioners refused to partition the same hence this complaint.

Defendants *Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua* filed a Motion to Dismiss on the grounds that the claim of plaintiffs had been waived, abandoned or otherwise extinguished; that plaintiffs' cause of action is barred by laches or the statute of limitations; and that the complaint failed to comply with Article 151 of the Family Code.[4]

Per Order[5] dated February 9, 2004, the RTC denied the motion to dismiss.

Thereafter, *Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua* filed their Answer with Counterclaim[6] where they alleged that the subject parcel of land was paid for by them. *Santiago Cheng and Petra Cheng Sing*, who are the siblings of *Jose Ma. Cheng Sing Phuan* were merely invited by the latter to join in the business of operating a rice mill built in the said parcel of land because of the latter's desire to help them. It was their

agreement though that Santiago Cheng and Petra Cheng Sing should reimburse Jose Ma. Cheng Sing Phuan the purchase price thereof. Petra Cheng Sing initially paid her share but later asked for the return of her money with interests. Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua returned her money with interest hence, Petra Cheng Sing has no more right thereon. Santiago Cheng on the other hand, never contributed money to the business undertaking but was employed by Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua thereat.

Plaintiffs Spouses Santiago Cheng and Avelina Sihiyon then filed their Reply and Answer to Counterclaim[7] dated June 25, 2004. The case was thereafter set for pre-trial. Plaintiffs Spouses Santiago Cheng and Avelina Sihiyon submitted their Pre-Trial Brief[8] dated August 6, 2004 while defendants Spouses Jose Ma. Cheng Sing Phuan and Angelina Chua also filed their Pre-Trial Brief[9] dated August 18, 2004. After the pre-trial conference, a Pre-Trial Order[10] was issued by the RTC dated January 12, 2006.

Trial ensued but in the course thereof, defendant Jose Ma. Sing Phuan died on January 8, 2007 per Notice of Death with Motion to Suspend Proceeding[11] dated February 24, 2007. The motion was granted hence, the proceedings were suspended until the deceased will be duly substituted.

Counsel for the original defendant Jose Ma. Sing Phuan filed a motion to withdraw as counsel due to the demise of the latter which was duly granted by the RTC.

On June 15, 2007, petitioners-defendants, through their new counsel, filed a Formal Appearance of New Counsel and Notice of Substitution of Party Defendant.[12] The same was duly noted and granted by the RTC per Order[13] dated June 25, 2007.

Respondents-plaintiffs then filed an Urgent Motion[14] to strike out the testimony of Jose Ma. Cheng Sing Phuan on the ground that the latter was not cross-examined due to his untimely demise but the same was denied per Resolution[15] dated July 20, 2007. Respondents-plaintiffs moved for the reconsideration thereof but the same was likewise denied.

Trial continued and during the hearing held on January 16, 2008, petitioners-defendants manifested that they were presenting six additional witnesses who were not previously named in the pre-trial order. Respondents-plaintiffs opposed the same and filed their Objection[16] dated March 24, 2008. The RTC then issued the assailed Resolution denying the oral motion. Petitioners-defendants moved for reconsideration but the same was denied per the assailed order.

Aggrieved, petitioners-defendants filed the instant petition for certiorari on the following ground:

THE HONORABLE PUBLIC RESPONDENT RTC A QUO GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED THE PETITIONERS-DEFENDANTS' (MOTION) TO PRESENT ADDITIONAL WITNESSES.

The petition is bereft of merit.

The primary issue for our resolution is whether or not petitioners may present witnesses who were not listed as such in the pre-trial order.

Petitioners contend that the RTC erred in denying their motion to present additional witnesses who were not previously named in the pre-trial order considering that they did manifest in their pre-trial brief that depending on the development of the trial, they reserve the right to present additional witnesses.

We do not agree with petitioners.

Section 7, Rule 18 of the 1997 Rules of Civil Procedure, as amended, provides as follows:

“SEC. 7. Record of pre-trial. – The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.”

In the instant case, it was categorically stated in the pre-trial order that the defendants will be presenting the testimonial evidence of Jose Ma. Cheng Sing Phuan and Petra Cheng Sing only.

The said pre-trial order likewise directed the parties to go over the same to check any error therein and to take the necessary steps to correct the same within a non-extendible period of five (5) days from receipt of a copy thereof. Otherwise, no correction will be allowed.

We note that petitioners did not take the necessary steps to correct the pre-trial order even with their insistence that their pre-trial brief contains a reservation as to the presentation of other witnesses not previously named. Hence, the RTC cannot be faulted for exercising its discretion to exclude the unlisted or unnamed witnesses.

The Supreme Court, in the case of *SILVESTRE TIU vs. DANIEL MIDDLETON and REMEDIOS P. MIDDLETON*,^[17] has ruled that:

“Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as “the most important procedural innovation in Anglo-Saxon justice in the nineteenth century,”^[18] pre-trial seeks to achieve the following:^[19]

- (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- (b) The simplification of the issues;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The advisability of a preliminary reference of issues to a commissioner;
- (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
- (h) The advisability or necessity of suspending the proceedings; and
- (i) Such other matters as may aid in the prompt disposition of the action.

In light of these objectives, the parties are also required to submit a pre-trial brief, which must contain the following:^[20]

- (a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The issues to be tried or resolved;
- (d) The documents or exhibits to be presented, stating the purpose thereof;
- (e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
- (f) The number and names of the witnesses, and the substance of their respective testimonies.

Petitioner argues that the Rules of Court merely requires that witnesses be named in the pre-trial brief, but it does not authorize a judge to exclude a witness who was not identified. Furthermore, he maintains that neither the trial court nor the respondents required during the pre-trial that unnamed witnesses be barred from

testifying. Finally, he urges this Court to brush 'aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure.'

Respondent, on the other hand, argues that the assailed Orders were not capricious or whimsical, because the Notice of Pre-trial Conference contained a warning that witnesses whose names were not listed might not be allowed to testify. They also contend that the rule enumerating the contents of a pre-trial brief was not a mere technicality, but 'a salutary provision intended to avoid surprise and entrapment of the contending parties.'

At the outset, the Court emphasizes that pre-trial and its governing rules are not technicalities which the parties may ignore or trifle with. As earlier stated, pre-trial is essential in the simplification and the speedy disposition of disputes. Thus, the Court has observed:[21]

Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

In a pre-trial, the judge is not a passive arbiter; he is an active participant who constantly seeks avenues through which trial can be expedited, simplified or even avoided by a resort to alternative modes of dispute resolution. The role and the authority of the trial court during pre-trial has been described by the Court in this wise:[22]

Again, it is unquestionably within the trial court's power to require the parties at the pre-trial to (a) state the number of witnesses intended to be called to the stand, their names addresses, and a brief summary of the evidence each of them is expected to give, as well as to (b) formally disclose the number of the documents and things to be submitted and to furnish copies thereof or a short description of the nature of each. The tenor or character of the testimony of the witnesses and of the writings to be adduced at the trial being thus made known, in addition to the particular issues of fact and law, it becomes reasonably feasible to require the parties to state the number of trial dates that each will need to put on his case, and maybe bring about a further agreement as to some other controverted facts, or an amendment of the pleadings, etc.

What needs stressing is that the parties as well as the trial court must realize that the parties are obliged not only to make formal identification and specification of the issues and of their proofs, as above described [--] indeed, there is no reason why the Court may not oblige the parties to set these matters down in the separate writings and submit them to the Court prior to the pre-trial, and then to discuss, refine and embody the matters agreed upon in a single document at or shortly after the pre-trial -- but also and equally as peremptorily, to directly address and discuss with sincerity and candor and in entire good faith each of the other subjects enumerated in Section 1, Rule 20, i.e., the 'possibility of an amicable settlement or of a submission to arbitration,' the 'advisability of a preliminary reference of issues to a commissioner,' and 'such other matters as may aid in the prompt disposition of the action,' inclusive of a resort to the modes of discovery.

In light of the objectives of a pre-trial and the role of the trial court therein, it is evident that judges have the discretion to exclude witnesses and other pieces of evidence not listed in the pre-trial brief, provided the parties are given prior notice to this effect.[23]

In the present case, the Notice of Pre-trial Conference warned the parties that 'witnesses whose names and addresses are not submitted at the pre-trial may not be allowed to testify at the trial.' In his Pre-trial Brief, petitioner merely stated that he intended to present four (6) witnesses 'whose direct testimony will be finished in an average of one (1) hour each.' He further requested four hearing days to present his evidence. Evidently,

he did not comply with the above rules and the Notice of Pre-trial Conference, because he failed to give the names of his witnesses and the synopsis of their testimonies.”

We likewise find bereft of merit petitioners' contention that the former counsel of the late defendant Jose Ma. Cheng Sing Phuan committed gross negligence when he failed to move for the correction of the pre-trial order thereby depriving petitioners of due process.

The Supreme Court in the case of JAIME T. TORRES vs. CHINA BANKING CORPORATION,[24] has ruled that:

“It is settled rule that the mistake of a counsel binds the client.[25] It is only in case of gross or palpable negligence of counsel when the courts must step in and accord relief to a client who suffered thereby.[26]

In Saint Louis University v. Cordero,[27] the Court held:

The doctrinal rule is that the negligence of counsel binds the client. Otherwise, there would never be an end to a suit so long as a new counsel could be employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.

To fall within the exceptional circumstances such as those found in Amil v. Court Appeals relied upon by the petitioners, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court, the result of which is that he is deprived of his property without due process of law. Thus, where 'a party was given the opportunity to defend [its] interests in due course, [it] cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process.'

In the Amil case, the petitioner therein was declared in default for failure of his counsel to file an answer within the reglementary period. The case was heard ex-parte, and judgment was rendered in favor of the respondents. Petitioner's counsel further failed to take any action to protect the interests of the petitioner in subsequent proceedings by filing an opposition to the motion to declare him in default or by moving to set aside the order of default. The petitioner therein was, therefore, deemed to have been deprived of his chance to present his side and to flesh out his arguments.

In contrast, the instant case underwent a full-blown trial. Both parties were adequately heard, and all issues were ventilated before the decision was promulgated. All the necessary pleadings were filed by petitioners' counsel to protect their interests when the case was still before the trial court. In fact, when a decision was rendered, petitioners' counsel even filed an Opposition to respondents' motion for reconsideration. Unlike in Amil, herein petitioners were not deprived of their day in court.[28]”

A perusal of the records before us reveals that the defendants in the court a quo were given their day in court. It is not disputed that a full blown trial was conducted. Defendant Jose Ma. Cheng Sing Phuan was able to testify on direct examination and even if he was not cross-examined due to his untimely demise, his direct testimony was not expunged from the records.

It cannot also be gainsaid that petitioners, the heirs who substituted the late defendant Jose Ma. Cheng Sing Phuan, were denied due process with the denial of the motion to present additional witnesses. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate.[29] Hence, the fact that there was proper substitution is enough to satisfy the requirements of due process.

Moreover, we note that herein petitioners have participated in the proceedings before the court a quo, they continued the trial of the case with the assistance of their new counsel and filed pleadings thereat and present evidence in defense of the deceased. There is also one other witness who was listed in the pre-trial order who is

yet to give her testimony. These circumstances would negate any claim that their right to due process was violated.

Hence, the court a quo did not err in denying the motion of the petitioners-defendants to present additional witnesses other those listed and named in the pre-trial order.

A petition for certiorari under Rule 65 of the Rules of Civil procedure is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. For certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.”[30]

“Without jurisdiction” means the court acted with absolute lack of authority. There is “excess of jurisdiction” when the court transcends its power or acts without any statutory authority. “Grave abuse of discretion” implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[31]

There being no showing of any grave abuse of discretion on the part of the court a quo, the instant petition is hereby dismissed.

WHEREFORE, the instant petition is hereby DISMISSED. The Resolution dated January 27, 2012 and the Order dated June 13, 2012 of Branch 39 of the Regional Trial Court of Iloilo City Civil Case No. 03-27527 are AFFIRMED.

SO ORDERED.

Maxino, P.A.A. and Francisco, R.C., JJ., concur.

[1] Rollo at pp. 52-55..

[2] Rollo at pp. 50-51.

[3] Rollo at pp. 22-35.

[4] Order dated February 9, 2004, Rollo at pp. 69-70.

[5] Ibid.

[6] Rollo at pp. 71-81.

[7] Rollo at pp. 86-89.

[8] Rollo at pp. 92-100.

[9] Rollo at pp. 101-112.

[10] Rollo at pp. 113-125.

[11] Rollo at pp. 126-128.

[12] Rollo at pp. 132-133.

[13] Rollo at p. 136.

[14] Rollo at pp. 137-139.

[15] Rollo at pp. 143-144.

[16] Rollo at pp. 146-151.

[17] G.R. No. 134998. July 19, 1999 .

[18] Guillermo Santos, *The Fernan Court and the New Era of Judicial Adjudication/ Administration*, 169 SCRA 419.

[19] Section 2, Rule 18 of the 1997 Rules of Court.

[20] Section 6 of the same Rules. Although this provision did not appear in the 1964 Rules, a similar one is found in Circular No. 1-89, which became effective on February 1, 1989.

[21] *Development Bank of the Philippines. v. Court of Appeals*, 169 SCRA 409, 411-412, January 26, 1989, per Narvasa, CJ.

[22] *Ibid.*

[23] Bellosillo, *Effective Pre-trial Technique* (1990), p. 135; citing *Bertram v. Harris*, 423 P. 2d 909 (1967).

[24] G.R. No. 165408, January 15, 2010.

[25] *Legarda v. Court of Appeals*, G.R. No. 94457, March 18, 1991, 195 SCRA 418.

[26] *Id.*

[27] 478 Phil. 739 (2004).

[28] *Id.* at 751-752.

[29] *ATTY. ROGELIO E. SARSABA vs. FE VDA. DE TE*, represented by her Attorney-in-Fact, *FAUSTINO CASTAÑEDA* , G.R. No. 175910 , July 30, 2009.

[30] *Madrigal Transport, Inc., vs. Lapanday Holdings Corporation; Macondray Company, Inc.; and Luis P. Lorenzo, Jr.*, 436 SCRA 123.

[31] *Id.*

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