

SHEILA OÑATE Y MEJER, PETITIONER-APPELLANT, VS. MEL CABRERA, KEITH CABRERA, HONORABLE ROLANDO V. BALGOS, PRESIDING JUDGE OF MTC, HINIGARAN, NEGROS OCCIDENTAL AND SHERIFF OF THE ...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This certiorari on appeal seeks to annul and set aside the Decision[1] dated December 17, 2012, of the Regional Trial Court (RTC), 6th Judicial Region, Branch 55, Himamaylan City, Negros Occidental which denied petitioner-appellant's petition for certiorari as well as the Order[2] dated March 13, 2013 denying petitioner-appellant's motion for reconsideration of the December 17, 2012 Decision.

The antecedents of the this case as quoted from the assailed decision are as follows:

“This case is a verified Petition[3] for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner, SHEILA OÑATE y MEJER, praying that the order[4] of the Municipal Trial Court of Hinigaran, Negros Occidental, dated October 20, 2011, in Crim. Case No. MTC-2174 for Violation of BP 22 pending in said court which ordered the substitution of the deceased private complainant, Ma. Sonora Cabrera, with her surviving heirs, Mel Cabrera and Keith Cabrera, and the issuance of a Writ of Execution[5] be nullified and set aside for having been issued with 'grave abuse of discretion amounting to lack or excess of jurisdiction.'

In her petition, petitioner, SHEILA OÑATE y MEJER, alleges that she was accused for issuing a bad check and tried by MTC-Hinigaran, Negros Occidental in Crim. Case No. 2174 for Violation of BP 22. While the evidence for the accused, herein petitioner SHEILA OÑATE y MEJER, was being heard, the private complainant, Ma. Sonora N. Cabrera died but her counsel failed to inform the court of her death. Thereafter the court rendered its decision dated November 4, 2010 without any private complainant because no proper substitution was made before the said judgment was rendered. The accused, herein petitioner, SHEILA OÑATE y MEJER was acquitted but was ordered to pay damages. The accused did not file any motion for reconsideration or appeal from the judgment and likewise the Court did not issue any order of finality of its decision. Counsel for the private complainant, Ma. Sonora N. Cabrera however filed a motion for issuance of writ of execution which was granted but the order was withdrawn upon motion for reconsideration of the accused, herein petitioner, SHEILA OÑATE y MEJER. Counsel for the private complainant, Ma. Sonora N. Cabrera filed a second amended motion for substitution[6] of parties which was granted and such order[7] granting the same, dated October 20, 2011, is what the accused considers 'as having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.'

Petitioner further alleges that the order dated October 20, 2011 was received by her counsel on November 4, 2011 and a Motion for Reconsideration[8] dated November 15, 2011 was thereafter filed but when said Motion for Reconsideration was filed with the MTC-Hinigaran on November 16, 2011, it was found out that the Clerk of Court of MTC-Hinigaran had already issued a Writ of Execution[9] dated October 27, 2011 and thus this petition was filed without waiting for the lower court's resolution of the Motion for Reconsideration as it has become moot and academic by the issuance of the Writ of Execution dated October 27, 2011 which did not

await the finality of the order dated October 20, 2011.

A Temporary Restraining Order[10] dated December 12, 2011 was issued by the Office of the Executive Judge ordering the respondents Mel Cabrera, Keith Cabrera, Hon. Rolando V. Balgos, and the Sheriff of the Regional Trial Court, Himamaylan City to cease and desist and refrain from implementing or enforcing the Writ of Execution dated October 27, 2011, within a period of Seventy Two (72) hours. Subsequently, this case was raffled to this court after a contemporaneous service of summons together with a copy of the petition upon respondents.

On December 19, 2011, a Manifestation in Support of the Position of the Private Respondent against the Restraining Order[11] was filed by the private respondents, Mel Cabrera and Keith Cabrera through counsel, alleging among others that the petitioner, SHEILA OÑATE y MEJER has no clear and positive right to ask for an injunction. Further the respondent judge, Hon. Rolando V. Balgos, Presiding Judge of MTC-Hinigaran, did not issue the questioned order on the basis of personal hostility and passion to the evasion of his positive duty, rather he rendered the Order based on the previous Orders from which the questioned order was derived, by anchoring his grounds thereon, on recent decisions of the Supreme Court on substitution of parties. Lastly, respondents manifested that the instant petition is a dilatory move to make this case repetitious and to continue ad infinitum despite its judgment being now final and executory.

Private respondents, Mel Cabrera and Keith Cabrera likewise filed an Answer[12] dated December 19, 2011 through counsel and alleged among others that, the money claim in the amount of Sixty Thousand Pesos (Php 60,000.00) is a sum of money which arose ex-delicto, hence the action survives, the instant case is a criminal case and is not governed by Rule 3, Section 16 of the 1997 Rules of Civil Procedure rather by the 2000 Rules of Criminal Procedure wherein the parties are not required to file a formal substitution of parties in the event of death of private complainant, that granting without admitting that Section 16, Rule 3 of the 1997 Rules of Civil Procedure applies, the said Rule has already been modified and superseded by recent jurisprudence; and that the decision of the respondent judge being already final and executory, the same could not be subjected to injunction much less a TRO.”

Based on the foregoing, the RTC rendered the assailed decision in favor of private respondents-appellees. Petitioner moved for the reconsideration thereof but the same was denied per the assailed order.

Hence, the present certiorari on appeal. Petitioner-appellant argued in her Appellant's Memorandum[13] that the RTC should have ruled that the MTC acted with grave abuse of discretion in ordering the substitution of the deceased considering that the money claim in the amount of P60,000.00 of Ma. Sonora N. Cabrera is a personal action which does not survive her death.

Petitioner-appellant further argued that granting en arguendo that substitution is allowed in the instant case, the rules on substitution were not complied with by the MTC hence, it acted with grave abuse of discretion.

We do not agree with petitioner-appellant.

We note that the case filed against herein petitioner-appellant before the MTC was for violation of Batas Pambansa Blg. 22 as well as a collection suit because the latter is deemed instituted in the former. Instructive is the ruling of the Supreme Court in the case of ANTONIO CHIENG, substituted by WILLIAM CHIENG vs. SPOUSES EULOGIO and TERESITA SANTOS,[14] to wit:

“When petitioner filed Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 against respondent Eulogio, petitioner’s civil action for the recovery of the amount of the dishonored checks was impliedly instituted therein pursuant to Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. In the case of Hyatt Industrial Manufacturing Corporation v. Asia Dynamic Electrix Corporation,[15] we elucidated thus:

We agree with the ruling of the Court of Appeals that upon filing of the criminal cases for violation of B.P. 22, the civil action for the recovery of the amount of the checks was also impliedly instituted under Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. Under the present revised Rules, the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. The reservation to file a separate civil action is no longer needed. The Rules provide:

Section 1. Institution of criminal and civil actions.

(a) x x x x

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

XXX

Consequently, when petitioner filed Criminal Cases No. 612-90 to No. 615-90, he was deemed to have already availed himself of the remedy of collection suit.”

The question now is whether or not a suit for collection of sum of money survives the death of the complainant.

As a general rule, the death of either the creditor or the debtor does not extinguish the obligation. Obligations are transmissible to the heirs, except when the transmission is prevented by the law, the stipulations of the parties, or the nature of the obligation. Only obligations that are personal or are identified with the persons themselves are extinguished by death.[16] Examples of purely personal actions are those for support, divorce, annulment of marriage and legal separation.[17] Clearly, the instant case is not a purely personal action hence, the same survives.

The Supreme Court in the case of EDWINO A. TORRES (deceased), represented and substituted by ALFONSO P. TORRES III and FATIMA P. TORRES, son and daughter, respectively, of deceased petitioner vs. BALLIGI V. RODELLAS,[18] has ruled that:

“...Substitution may only be allowed in actions that survive the death of a party thereto. In *Gonzales v. Philippine Amusement and Gaming Corporation*,[19] citing *Bonilla v. Barcena*,[20] we declared that the determination of whether an action survives the death of a party depends on the nature of the action and the damage sued for. We explicated:

In the causes of action which survive the wrong complained of affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental x x x.”

In an action for collection of sum of money, what is primarily affected are sums of money or property, the damages or injuries to the parties therein are merely incidental. Hence, the action survives.

Anent petitioner-appellant's contention that since the rules on substitution of parties provided for in the Rules of Court has not been faithfully complied with, then the MTC should not have ordered the substitution, is likewise bereft of merit. The Supreme Court in the case of JOSE RAMILO O. REGALADO vs. CHAUCER B. REGALADO and GERARD R. CUEVAS,[21] has ruled that:

“The action that led to the present controversy was one for cancellation of title, which is a real action affecting as it does title to or possession of real property. It is an action that survives or is not extinguished upon the death of a party, pursuant to Section 1, Rule 87 of the Rules of Court.

Section 16, Rule 3 lays down the procedure that must be observed when a party dies in an action that survives,

viz.:

SEC.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 within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

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.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The rule is intended to protect every party's right to due process. The estate of the deceased party will continue to be properly represented in the suit, through the duly appointed legal representative. Moreover, no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied.

Hugo Regalado passed away on April 23, 2008, but the notice of his death was served to the CA by his counsel only on December 15, 2009. Although Hugo Regalado died as early as the pendency of the proceedings before the RTC, the non-fulfillment of the requirement before said court is excusable since the RTC rendered a decision on May 15, 2008, or before the expiration of the 30-day period set by the rule.

However, it should not have taken Atty. Miguel B. Albar twenty (20) months before notifying the CA, when the same ought to have been carried out at the time of the filing of their appeal.

This notwithstanding, it was still error for the CA to dismiss the appeal. After receiving the notice of Hugo Regalado's death, together with a list of his representatives, it was incumbent upon the appellate court to order the latter's appearance and cause their substitution as parties to the appeal. The belated filing of the notice must not prejudice the deceased party's legal representatives; the rules clearly provide that it is a mere ground for a disciplinary action against the erring counsel. Instead of abiding by the course of action set forth by the rules, the CA adopted a myopic examination of the procedural facts of the case. It focused simply on the validity of the Special Power of Attorney, and completely disregarded the notice of Hugo Regalado's death. Indeed, nothing is more unfortunate in law than when a counsel's remedial faux pas is improperly addressed by a court."

Likewise instructive is the ruling of the Supreme Court in the case of **ARCADIO and MARIA LUISA CARANDANG vs. HEIRS OF QUIRINO A. DE GUZMAN**, namely: **MILAGROS DE GUZMAN, VICTOR DE GUZMAN, REYNALDO DE GUZMAN, CYNTHIA G. RAGASA and QUIRINO DE GUZMAN, JR.**,^[22] to wit:

"The spouses Carandang posits that such failure to comply with the above rule renders void the decision of the RTC, in adherence to the following pronouncements in *Vda. de Haberer v. Court of Appeals*^[23] and *Ferreria v. Vda. de Gonzales*:^[24]

Thus, it has been held that when a party dies in an action that survives and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no substitution has ever been effected, the trial held by the court without such legal

representatives or heirs and the judgment rendered after such trial are null and void because the court

acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and judgment would be binding.[25]

In the present case, there had been no court order for the legal representative of the deceased to appear, nor had any such legal representative appeared in court to be substituted for the deceased; neither had the complainant ever procured the appointment of such legal representative of the deceased, including appellant, ever asked to be substituted for the deceased. As a result, no valid substitution was effected, consequently, the court never acquired jurisdiction over appellant for the purpose of making her a party to the case and making the decision binding upon her, either personally or as a representative of the estate of her deceased mother.[26]

However, unlike jurisdiction over the subject matter which is conferred by law and is not subject to the discretion of the parties,[27] jurisdiction over the person of the parties to the case may be waived either expressly or impliedly.[28] Implied waiver comes in the form of either voluntary appearance or a failure to object.[29]

In the cases cited by the spouses Carandang, we held that there had been no valid substitution by the heirs of the deceased party, and therefore the judgment cannot be made binding upon them. In the case at bar, not only do the heirs of de Guzman interpose no objection to the jurisdiction of the court over their persons; they are actually claiming and embracing such jurisdiction. In doing so, their waiver is not even merely implied (by their participation in the appeal of said Decision), but express (by their explicit espousal of such view in both the Court of Appeals and in this Court). The heirs of de Guzman had no objection to being bound by the Decision of the RTC.

Thus, lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence.

It also pays to look into the spirit behind the general rule requiring a formal substitution of heirs. The underlying principle therefor is not really because substitution of heirs is a jurisdictional requirement, but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein.[30] Such violation of due process can only be asserted by the persons whose rights are claimed to have been violated, namely the heirs to whom the adverse judgment is sought to be enforced.”

Hence, the RTC did not err in denying petitioner-appellant's petition for certiorari. 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.”[31]

“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.[32]

There being no showing of any grave abuse of discretion on the part of the MTC, we find no reversible error in the decision of the RTC in denying petitioner-appellant's petition for certiorari.

WHEREFORE, the instant appeal is hereby DENIED. The Decision dated December 17, 2012 of the Regional Trial Court (RTC), 6th Judicial Region, Branch 55, Himamaylan City, Negros Occidental, as well as the Order dated March 13, 2013, are AFFIRMED in toto.

SO ORDERED.

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

[1] Records at pp. 247-252.

[2] Records at p. 265.

[3] Records at pp. 1-17.

[4] Records at pp. 64-66.

[5] Records at p. 72.

[6] Records at pp. 47-58.

[7] Records at pp. 64-66.

[8] Records at pp. 67-71.

[9] Records at p. 72.

[10] Records at pp. 80-81.

[11] Records at pp. 168-179.

[12] Records at pp. 180-198.

[13] Rollo at pp. 22-31.

[14] G.R. No. 169647 , August 31, 2007.

[15] G.R. No. 163597, 29 July 2005, 465 SCRA 454, 459-461.

[16] STRONGHOLD INSURANCE COMPANY, INC. vs. REPUBLIC-ASAHI GLASS CORPORATION; G.R. No. 147561, June 22, 2006.

[17] Ibid at Note 10 thereof citing Lapuz Sy v. Eufemio, 43 SCRA 177, January 31, 1972.

[18] G. R. No. 177836 ,September 4, 2009

[19] 473 Phil. 582, 591 (2004).

[20] 163 Phil. 521 (1976).

[21] G.R. No. 196919 , June 6, 2011.

[22] G.R. No. 160347, November 29, 2006.

[23] G.R. Nos. L-42699 & L-42709, 26 May 1981, 104 SCRA 534.

[24] 104 Phil. 143 (1958).

[25] Vda. de Haberer v. Court of Appeals, supra note 5 at 542.

[26] Ferreria v. Vda. De Gonzales, supra note 6 at 149.

[27] Zamora v. Court of Appeals, G.R. No. 78206, 19 March 1990, 183 SCRA 279, 283-284.

[28] Salic v. COMELEC, G.R. Nos. 157007 & 157015, 17 March 2004, 425 SCRA 735, 754.

[29] See Manila Railroad Co. v. Attorney-General, 20 Phil. 523, 535 ((1911).

[30] Vda. De Salazar v. Court of Appeals, 320 Phil. 373, 377 (1995).

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

[32] Id.

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