

FELOMINA G. SERMON, ADONIS SERMON ZARAGOZA, ARNEL SERMON ZARAGOZA, PLAINTIFFS-APPELLANTS, VS. ESTATE OF DEMETRIO MANERA, ESTATE OF MAURO MANERA, DALMACIO MANERA, HONORATA MANERA...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an appeal[1] from the Orders of the Regional Trial Court, Branch 29 of Toledo City, Cebu dated April 26, 2012[2] and August 24, 2012[3] dismissing the case and thereafter denying the Partial Motion for Reconsideration[4] filed by herein plaintiff, respectively. The dispositive portion of the assailed April 26, 2012 Order reads, to wit:

“WHEREFORE, finding no cogent reason for this Court to reconsider its Order dated July 4, 2011, the Motion for Reconsideration filed by plaintiffs is hereby DENIED.

In addition thereto, and as prayed for in the defendants' Opposition to Motion for Reconsideration, this case is ordered DISMISSED.

Furnish Atty. Paulino B. Labrado, Atty. Bernardito A. Florido and the parties copies of this order.

ORDERED.”[5]

The August 24, 2012 Order states:

“WHEREFORE, the Partial Motion for Reconsideration filed by plaintiffs is DENIED.

Furnish a copy of this order to Atty. Paulino B. Labrado and Atty. Bernardito A. Florido.

SO ORDERED.”[6]

ANTECEDENT FACTS

The property involved in this case is a parcel of land located at Aliwanay, Balamban, Cebu with an area of Three Thousand Eight Hundred Twenty-Eight (3,828) square meters covered by Original Certificate of Title No. RO-8939. This property has never been subdivided or partitioned among the registered co-owners.

The co-owners of the subject land with their corresponding undivided interests, as shown in the above-stated title are the following:

- DEMETRIO MANERA, married to Natalia Kyamko – 1/7 share;
- MAURO MANERA, married to Irene Vallos – 1/7 share;
- DALMACIO MANERA, married to Agustina Narciso – 1/7 share;
- HONORATA MANERA, single – 1/7 share;

- ANTONIA BOVEDA, single – 1/7 share;
- MAGDALENA CORAZO, single – 1/35 share;
- VICENTA CORAZO, single – 1/35 share;
- EPITACIO CORAZO, single – 1/35 share;
- MAURICIA CORAZO, single – 1/35 share;
- MARIA CORAZO, single – 1/35 share;
- PERFECTA GIMENA, married to Paulino Mosquera – 1/42 share;
- SOFIA GIMENA, married to Monico Milan – 1/42 share;
- FILEMON GIMENA, single – 1/42 share;
- EUSTAQUIA GIMENA, married to Sergio Arringo – 1/42 share;
- ANACORETA GIMENA, married to Lucrecio Sermon – 1/42 share;
- ALFREDA GIMENA, single – 1/42 share.

Defendants Spouses Exequiel and Melchora Cañares allegedly purchased 1/12 portion of the above-described property in the year 1981. Thereafter, they successfully had a tax declaration[7] of a portion of the subject land – about 319 square meters – issued in their name. On the other hand, defendants Spouses Delator and Chan purportedly purchased certain shares from the heirs of some of the registered co-owners. Consequently, they achieved to have a 2,074 square meter portion of the subject land declared in their names via Tax Declaration No. 16041[8]. Accordingly, defendants Spouses Cañares, Spouses Delator and Menas Chan occupied and developed their respective portions of the subject property.

Owing to the so-called acquisition of some of the portions of the subject land, the remaining portion left for the co-owners is only One Thousand Four Hundred Thirty-Five (1,435) square meters. Strikingly, another tax declaration was issued under the name of defendant Alejandro Manera for the remaining 1,435 square meter portion of the land.

In view of the foregoing, it would appear that plaintiffs-appellants, being one of the co-owners and actual possessors of a portion of the subject property, no longer had any share of the same. Hence the institution of the instant Complaint for Declaration of Nullity of Tax Declarations, Partition, Recovery of Ownership and Possession, Damages and Attorney's Fees filed by the plaintiffs-appellants before the Regional Trial Court, Branch 29 of Toledo City, Cebu on January 11, 2007.

In Answer[9], defendants Melchora Cañares (widow), Spouses Delator and Menas Chan primarily claimed that the portions which they respectively purchased from the registered owners of the subject land were each acquired by them for more than twenty-five (25) years already without any objection or opposition from the plaintiffs. Besides, since the acquisition of their respective shares, they have been paying for the realty taxes of the same which was never done by the plaintiffs. Added to that, answering defendants insisted that the Complaint should be dismissed based on the following grounds, to wit:

1. The Certificate to File Action is not valid as there was neither a valid Complaint nor valid proceedings before any Barangay Lupon. What transpired before the office of the Barangay Captain was a mere meeting;
2. An action for judicial partition could not be mingled with an action for reconveyance or recovery of ownership;

3. The extrajudicial settlement of the Estate of Anacoreta Gimena Sermon was self-serving and has no probative value since such did not prove the filiation between Anacoreta Sermon and the plaintiffs.

4. Plaintiffs' cause of action has been barred by laches and prescription;

5. The complaint failed to state the assessed value of the subject property, hence, the correct amount of the filing fees could not be ascertained.

Other than the answering defendants, the other defendants were not served with summons. Resultantly, plaintiffs filed an Ex-Parte Motion to Allow Service of Summons by Publication[10] which was granted by the trial court in an Order[11] dated March 2, 2007. The same Order was reiterated by the trial Court on May 28, 2007[12] after the answering defendants opposed the Motion filed by the plaintiffs.

On June 28, 2007, defendants Spouses Cañares and Delator, through their counsel, manifested[13] that defendants Dalmacio Manera, Honorata Manera, Antonia Boveda, Magdalena Corazo, Vicenta Corazo, Epitacio Corazo, Mauricia Corazo, Maria Corazo, Perfecta Gimena, Felimon Gimena, Eustaquia Gimena, Anacoreta Gimena and Alfreda Gimena were already dead. Hence, they are pleading for the plaintiffs to state before the court the names and last known addresses of the foregoing deceased defendants. Accordingly, plaintiffs complied[14] and the trial court duly noted[15] the compliance of the plaintiffs and the manifestation of the heirs of the deceased parties.

On September 22, 2008, answering defendants moved[16] to set a hearing for their Special and Affirmative Defenses as grounds for a motion to dismiss, duly opposed[17] by the plaintiffs, but was denied by the trial court in an Order[18] dated January 5, 2009. The court a quo then set the case for pre-trial conference[19] which was terminated on March 25, 2009.

Thereafter, trial ensued. Plaintiff Felomina Sermon was the first witness for the plaintiffs. However, on September 12, 2009, Felomina Sermon died[20], hence a Notice of Death with Motion to Substitute Compulsory Heirs[21] was filed by the plaintiffs stating that Felomina Sermon was survived by her children, Jerry G. Sermon, Ramil G. Sermon and Lucricio G. Sermon. Also, Jose Christophel Sermon Zaragosa manifested[22] that he is a sibling of the plaintiffs of the case. Resultantly, he prayed before the court to allow him to join as plaintiff in the case. In view of the foregoing incidents, the trial court issued an Order on November 3, 2010 directing the following:

1. SUSPENDING the proceedings of this case and cancelling its hearing on November 5, 2010 at 8:30 o'clock in the morning, until the court shall acquire jurisdiction all party defendants.
2. ORDERING the plaintiffs in this case to file an amended complaint within fifteen (15) days from receipt of this order, setting forth the following:
 1. impleading Jose Christophel Sermon Zaragosa as plaintiff; and Jerry G. Sermon, Ramil G. Sermon and Lucricio G. Sermon as substituted plaintiffs in lieu of deceased plaintiff Felomina G. Sermon;
 2. impleading the children of Francisca Gimena, namely, Adonis, Arnel, Jose and Tirso, Jr. as party defendants (unwilling co-plaintiffs); and
 3. naming as defendants, aside from Spouses Exequiel S. Cañares and Melchora Cañares, and Spouses Rolando Delator and Menas Chan, the defendants so named by plaintiffs' counsel in his Manifestation dated September 24, 2007 and received by the court on September 26, 2007.
3. ORDERING summons by publication of the Amended Complaint after the Amended Complaint is admitted by the court for the defendants so named in the Manifestation of the plaintiffs' counsel dated September 24, 2007, in the BANAT news, once a week for two (2) consecutive weeks; and submit proof thereof to the court within fifteen (15) days after the last publication thereof.

4. In which case a copy of the summons, Amended Complaint, and the order of summons by publication be sent by registered mail to the last known addresses of the defendants so named in the aforesaid Manifestation.

5. ORDERING the issuance of summons after the Amended Complaint is admitted by the court, to defendants-children of Francisca Gimena, namely, Adonis, Arnel, Jose and Tirso, Jr.”[23]

In compliance with the above-mentioned Order, plaintiffs filed an Amended Complaint[24] on January 11, 2011. However, in an Order[25] dated July 4, 2011, the trial court denied the admission of the same in view of the material discrepancies in the Amended Complaint from the original Complaint. The trial court found that in the Original Complaint, Anacoreta Gimena was one of the defendants, but in the Amended Complaint, neither Anacoreta Gimena nor her heirs were mentioned as defendants.

Plaintiffs moved[26] to reconsider the above-stated Order insisting that the amendment was proper because in the Original Complaint, the plaintiffs are: FELOMINA G. SERMON, ADONIS SERMON ZARAGOSA, and ARNEL SERMON ZARAGOSA. In the Amended Complaint, the plaintiffs are the HEIRS OF ANACORETA G. SERMON namely: JERRY G. SERMON, RAMIL G. SERMON, LUCRICIO G. SERMON (the children of deceased plaintiff Felomina G. Sermon), ADONIS SERMON ZARAGOSA, ARNEL SERMON ZARAGOSA, and JOSE CHRISTOPHEL SERMON ZARAGOSA. Such Motion was opposed[27] by answering defendants asserting that the most notable discrepancy in the Amended Complaint from the original was the impleading of Anacoreta Gimena as a plaintiff in this case when she was originally impleaded as a defendant. Also, plaintiffs claimed that the determination of the legal heirs of the deceased must be made in the proper special proceedings, not in an ordinary suit for reconveyance of property.

On April 26, 2012, the court a quo denied[28] the Motion for Reconsideration and thereafter dismissed the case, as prayed for by the defendants.

Pained, plaintiffs-appellants appeal the assailed Orders submitting the following assigned errors, to wit:

I.

THE TRIAL COURT ERRED IN DENYING ADMISSION TO THE AMENDED COMPLAINT ON THE GROUND OF MATERIAL DISCREPANCIES BETWEEN THE ORIGINAL AND AMENDED COMPLAINTS;

II.

THE TRIAL COURT GRAVELY ERRED IN ORDERING THE DISMISSAL OF THE CASE ON THE GROUND OF FAILURE TO MENTION THE SURVIVING HEIRS OF DECEASED DEFENDANTS IN THE SUPPOSED AMENDED COMPLAINT[29]

OUR RULING

Plaintiffs-appellants impute error on the trial court's finding that the removal of the name of Anacoreta Gimena as a party defendant constitutes a material discrepancy that justified the dismissal of the Complaint. They claim that the Rules of Court, specifically Section 1 of Rule 10 provides that “pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may be speedily determined, without regard to technicalities, and in the most expeditious and inexpensive manner.” Such amendments were merely formal which may be effected by the court at any time, provided that it does not prejudice the rights of the adverse party. In this case, the inclusion of the name of Anacoreta Gimena as a party defendant in the original complaint was done through mere inadvertence or innocent mistake. Besides, nowhere in the body or the allegations in the original complaint did it state that she was a defendant, as the original complaint categorically stated that the plaintiffs are the legal heirs of Anacoreta Gimena. Other than that, the Amended

Complaint merely impleaded the indispensable parties to the case. It did not alter the cause of action of the plaintiffs nor did it prejudice the rights of the defendants. Hence, the trial court gravely erred in denying admission of the Amended Complaint, much more dismissing the complaint.

Plaintiffs-appellants likewise assail the trial courts ruling in dismissing the case on the ground that the surviving heirs of the deceased defendants were not impleaded in the Amended Complaint. Contrary to such allegation, a careful scrutiny of the same would however reveal that the names of the surviving heirs of the deceased defendants were patently included as party defendants in the Amended Complaint. Too, Section 11, Rule 3 of the Rules of Court prohibits the dismissal of a case on the ground of misjoinder or non-joinder of parties.

For their part, defendants-appellees contend that the trial court was correct in denying admission of the Amended Complaint because the same was interposed merely for delay. The amendment filed by plaintiffs-appellants did not cause to show the proper parties-in-interest of the case, despite numerous opportunities given by the trial court. Added to that, defendants-appellees asseverate that appeal is not a proper remedy to question the denial of the admission of the Amended Complaint as such order was an interlocutory one.

The contentions of plaintiffs-appellants are meritorious.

Section 1, Rule 10 of the Rules of Court provides:

Sec. 1. Amendments in general. - Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

Further, Sections 2 and 3 of the same Rule provide:

Sec. 2. Amendments as a matter of right. - A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.

Sec. 3. Amendments by leave of court. - Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

It is clear from the aforequoted Sec. 3 that the trial court is accorded sound discretion to grant or deny the admission of any proposed substantial amendments to a pleading, like a complaint as in the instant case. The rule expressly provides that the proposed amendments are refused admittance if it appears that these are substantial and were made to delay the case. Generally, where the trial court has jurisdiction over the case, proposed amendments are denied if such would result in delay, or would result in a change of cause of action or defense or change the theory of the case, or are inconsistent with the allegations in the original complaint.[30]

In the present case, a careful scrutiny of the Amended Complaint vis-a-vis the original filed would reveal that the same was filed not to cause delay in the proceedings or to change the parties' cause of action or theory of the case. First, no additional cause of action was incorporated which necessitates the defendants-appellees to file an Amended Answer to controvert the new allegations in the Amended Complaint. Also, the amendment did not introduce new issues that materially alter the grounds of relief prayed for by the plaintiffs-appellants. The patent changes in the Complaint was merely the parties of the case which, in the first place, was duly directed by the trial court via its Order[31] dated November 3, 2010.

In the said Order, the trial court called upon the plaintiffs-appellants to implead Jose Christopel Sermon

Zaragosa as plaintiff; and Jerry G. Sermon, Ramil G. Sermon, and Lucricio G. Sermon as substituted plaintiffs in lieu of deceased plaintiff Felomina G. Sermon. Accordingly, the Amended Complaint was revised in this wise:

HEIRS OF ANACORETA SERMON namely: JERRY G. SERMON, RAMIL G. SERMON, LUCRICIO G. SERMON, ADONIS SERMON ZARAGOSA, ARNEL SERMON ZARAGOSA, JOSE CHRISTOPHEL SERMON ZARAGOSA,

Meanwhile, the plaintiffs in the Original Complaint are as follows:

FELOMINA G. SERMON, ADONIS SERMON ZARAGOZA, ARNEL SERMON ZARAGOZA

If We were to examine the changes in the names of the plaintiffs, it is manifest that the same merely complied with the Order of the Court and the facts and circumstances obtaining in the case. Records would reveal that the plaintiffs instituted this case in their capacity as the legal heirs of Anacoreta Gimena Sermon, who as shown in the Original Certificate of Title of the subject property, owns a 1/42 share of the subject land. The children of Anacoreta Gimena were (1) Teodoro G. Sermon who died without issue; (2) Francisca G. Sermon who died with children Jose Christophel, Tirso, Adonis and Arnel, all surnamed Zaragosa; and (3) Felomina G. Sermon who died during the course of trial leaving behind her children Jerry, Ramil and Lucricio, all surnamed Sermon. Accordingly, the heirs of Anacoreta Gimena are Jose Christophel Zaragosa, Tirso Zaragosa, Adonis Zaragosa, Arnel Zaragosa, Jerry Sermon, Ramil Sermon, and Lucricio Sermon, who all are the plaintiffs in the Amended Complaint, except Tirso Zaragosa who never manifested in Court his intention to be impleaded in the case. Substantially, the Amended Complaint did not change the cause of action of herein plaintiffs-appellants. The admission of the Amended Complaint is thus warranted.

Besides, it is quite obvious that the trial court merely misconstrued and misapprehended the Amended Complaint submitted by the plaintiffs-appellants. In its Order, the trial court directed the inclusion of the children of deceased Felomina Sermon as plaintiffs of the case as substitute for their deceased mother. Yet, in the Amended Complaint, the case bore the title - - HEIRS OF ANACORETA SERMON namely xxx. The court a quo misconceived the name of Anacoreta Sermon, who was originally a party defendant, to the name of FELOMINA SERMON who was the original plaintiff in the case. The trial court failed to consider that the Amended Complaint plainly included in the title all the names of the heirs of ANACORETA SERMON since the original plaintiffs were technically and actually the heirs of Anacoreta Sermon, including the deceased Felomina Sermon who is subsequently to be substituted by her heirs. Apparently, the trial court gravely erred in denying admission of the Amended Complaint.

Second, the filing of the Amended Complaint was not meant to delay the proceedings. It was the trial court which commanded for the filing of the Amended Complaint by virtue of the above-mentioned Order dated November 3, 2010.

Section 3, Rule 10 of the Rules of Court provides that substantial amendments in pleadings can only be had if there is leave of court. Such leave of court may be denied or refused if the motion is dilatory. In this case, emphasis should be had on the fact that nowhere in the records did plaintiffs-appellants move to amend the Complaint. What was filed were the (1) Notice of Death with Motion to Substitute Compulsory Heirs[32] filed by the children of Felomina Sermon; and (2) Manifestation and Ex-Parte Motion to be Voluntarily Admitted to Court's Jurisdiction[33] filed by Jose Christophel Sermon Zaragosa. It was the trial court which ordered the rectification of the Original Complaint. Hence, it was not the plaintiffs-appellants who initiated the filing of the Amended Complaint for they merely complied with what was ordered to them by the trial court. Accordingly, the trial court gravely erred in refusing to admit the Amended Complaint for clearly it was not filed with substantial modifications, but merely submitted to comply with its own Order.

Defendants-appellees likewise insist that the name of Anacoreta G. Sermon was included as party defendant in the Original Complaint but was removed in the Amended Complaint. This change was considered a material discrepancy from the original one filed. Hence, the trial court was correct in refusing to admit the Amended Complaint.

We do not agree.

Contrary to the ruling of the trial court, the removal of Anacoreta Gimena as a party defendant was not a material discrepancy nor a substantial amendment. If anything, it merely tends to rectify an error which was manifestly typographical or was committed with inadvertence and honest mistake. While in the Original Complaint, Anacoreta Gimena was included as a party defendant, it is to be noted that plaintiffs-appellants derived their rights from Anacoreta Gimena herself. Thence, it would be absolutely illogical and absurd to include her as one of the defendants. Plainly, the inclusion of Anacoreta Gimena as a defendant in the Original Complaint was committed by mere oversight, and the amendment of the Original Complaint by deleting such mistake could not be considered a substantial or material discrepancy to make the case dismissible by the trial court.

Case law provides that the courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay.[34]

Furthermore, amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case, may so far as possible, be determined on its real facts and in order to speed up the trial of the case or prevent the circuitry of action and unnecessary expense. That is, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which might justify a refusal of permission to amend.[35]

Since, as explained above, amendments are generally favored, it would have been more fitting for the trial court to extend such liberality towards plaintiffs-appellants by admitting the Amended Complaint. It is patent that the trial proper has yet begun and was merely obstructed due to the death of the first witness for the plaintiffs-appellants. Moreover, doing so would have served the higher interest of justice as this would provide the best opportunity for the issues among all parties to be thoroughly threshed out and the rights of all parties finally determined. Hence, this Court overrules the trial court's denial of the motion to admit the amended complaint, and orders the admission of the same.[36]

Defendants-appellees' further asserted that the instant appeal is not the proper remedy as the assailed Order was a mere interlocutory Order, not a final one.

Such contention fails to persuade.

An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore the remedy of the plaintiffs is to appeal the order.[37]

In the instant case, inasmuch as the assailed Order merely denies the Motion for Reconsideration filed by plaintiffs-appellants, the same Order dismissed the Complaint, hence disposing the case. Resultantly, the proceedings are terminated. Thus, the filing of this appeal is in order.

WHEREFORE, premises considered, the appeal is GRANTED. The assailed Orders of the Regional Trial Court, Branch 29 of Toledo City dated April 26, 2012 and August 24, 2012 in Civil Case No. T-1704 is SET ASIDE. The court a quo is hereby directed to admit plaintiffs-appellants' Amended Complaint and to forthwith proceed

with the trial and adjudication of the case on the merits with appropriate dispatch.

SO ORDERED.

Ingles, G.T., Chairperson, and Lagura-Yap, M.B., JJ., concur.

[1] Appellant's Brief, Rollo, pp. 18-42

[2] Order dated April 26, 2012, penned by Judge Ruben F. Altubar, Record, pp. 619-621

[3] Order dated August 24, 2012, Id, p. 674

[4] Id, pp. 653-655

[5] Id, p. 621

[6] Id, p. 674

[7] Id, p. 14

[8] Id, p. 15

[9] Id, pp. 70-74

[10] Id, pp. 83-85

[11] Id, p. 175

[12] Order dated May 28, 2007, Id, pp. 177-180

[13] Manifestation, Id, pp. 198-199

[14] Manifestation of Compliance with Apology for the Delay, Id, pp. 219-223

[15] Order dated October 1, 2007, Id, p. 230

[16] Motion to Set Hearing of Defendants' Special and Affirmative Defenses as Grounds for a Motion to Dismiss, Id, pp. 249-250

[17] Opposition to Defendant's Motion dated September 11, 2008, Id, pp. 253-259

[18] Id, pp. 334-337

[19] Pre-Trial Order dated March 25, 2009, Id, pp. 379-385

[20] Certificate of Death, Id, p. 453

[21] Id, pp. 450-452

[22] Manifestation and Ex-Parte Motion to be Voluntarily Admitted to Court's Jurisdiction, Id, pp. 444-446

[23] Id, pp. 503-504

[24] Id, pp. 531-545

[25] Id, p. 575

[26] Motion for Reconsideration, Id, pp. 582-585

[27] Opposition to Motion for Reconsideration, Id, pp. 606-609

[28] Id, pp. 619-621

[29] Rollo, p. 18

[30] Locsin, et. al., vs. Sandiganbayan, et. al., G.R. No. 134458, August 9, 2007

[31] Order dated November 3, 2010, Record, pp. 514-516

[32] Id, pp. 450-452

[33] Id, pp. 444-446

[34] Lisam Enterprises, Inc., vs. Banco De Oro Unibank, et. al., G.R. No. 143264, April 23, 2012

[35] Id

[36] See Id

[37] Madrigal Transport Inc., vs. Lapanday Holdings Corporation, et. al., G.R. No. 156067, August 11, 2004

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