

WONG LING LING, PLAINTIFF-APPELLANT, VS. RESTITUTO S. SOLOMON, REGISTER OF DEEDS OF VALENZUELA CITY, ARNOLD NECISARIO AND DANILO INTOY, DEFENDANTS-APPELLEES.

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

This is an appeal seeking the reversal of the twin Orders dated 25 June 2012^[1] and 06 August 2012,^[2] issued by Branch 172, Regional Trial Court of Valenzuela City^[3] in Civil Case No. 220-V-11 entitled “Wong Ling Ling, Plaintiff versus Restituto S. Solomon, Register of Deeds of Valenzuela City, Arnold Necisario and Danilo Intoy, Defendants,” which dismissed the case and denied the reconsideration thereof.

The antecedent facts are as follows:

Allegedly, appellant Wong Ling Ling^[4] and her husband Tan Ming Chuan, a.k.a. Willy Tan Ming Chuan, have established their conjugal home^[5] in the property covered by Transfer Certificate of Title^[6] No. V-35993^[7] of the Registry of Deeds for Valenzuela City, registered in the name of “Tan Ming Chuan, aka Willy Tan, of legal age, Filipino, married to Wong Ling Ling, Chinese citizen.”^[8] On 29 January 2009, a Notice of Levy,^[9] was made on the subject property in NLRC NCR Case No. 02-01965-03,^[10] entitled “Arnold Nec[i]ssario and Danilo Intoy,^[11] Complainants, versus Malabon Star Construction Supply and Willy Tan Meng Chuan, Respondents” and subsequently annotated on the TCT under Entry No. 172527/V-35993.^[12] Soon, a Certificate of Sale,^[13] as well as the Sheriff's Final Deed of Sale,^[14] were issued in favor of appellees Necisario and Intoy.

According to the appellant, the levy made upon the whole property was illegal as she was not a party to the NLRC case and in violation of her rights as the legal spouse, in so far as her undivided conjugal share of one-half (1/2) pro indiviso is concerned, thus, prompting her on 08 December 2011 to initiate with the court a quo, the Complaint^[15] for the Declaration of Nullity of Levy on Execution, Certificate of Sale and Sheriff's Final Deed of Sale and Damages, against appellees Necisario and Intoy, together with the Sheriff of the National Labor Relations Commission,^[16] Restituto S. Solomon^[17] and the Register of Deeds^[18] of Valenzuela City, docketed as Civil Case No. 220-V-11.

Prior to the filing of the subject Complaint, it appears that on 15 November 2011, appellees Necisario and Intoy filed a Petition for the Cancellation of Title No V-35593 and Issuance of New Title docketed as LRC no. 75-V-11^[19] before Branch 270 of the Regional Trial Court^[20] of Valenzuela City.^[21] Appellant filed a Motion to Admit Complaint in Intervention^[22] with the Complaint in Intervention^[23] attached thereto in the said case, based substantially on the same averments in the subject Complaint. Said Motion was however denied.^[24] Upon denial of her Motion for Reconsideration,^[25] appellant filed a Notice of Appeal which she later on withdrew.^[26] This was granted by the trial court in its Order^[27] dated 06 July 2012.

Appellee Sheriff filed his Answer with Compulsory Counterclaim and Crossclaim,^[28] praying for the dismissal of the subject Complaint, claiming in essence that there was no irregularity in the procedure adopted in causing the execution of the judgment in the NLRC case.

Appellees Necisario[29] and Intoy, upon the other hand, filed their Answer with Motion to Dismiss[30] alleging, among others, forum-shopping, considering that the appellant's Motion filed in the Petition for Cancellation contained the same averments and prayers/reliefs sought.

The court a quo on its Order[31] dated 25 June 2012 dismissed the case for forum shopping, thus:

“X x x

Both this case and the complaint-in-intervention of plaintiff in LRC Case No. 75-V-11 asserted that she is the co-owner pro indiviso of one-half (½) of the subject property being married to Tan Ming Chuan, the registered owner of the subject property.

There is forum shopping when between an action pending before this court, and another one, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and a (c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to res judicata in the action under consideration.

The test in determining the presence of forum shopping is whether in the two or more cases pending, there is identity of (1) parties, (2) rights or causes of action and (3) relief/s sought. All of these are present in this case.

WHEREFORE, the motion to dismiss is GRANTED. The instant case is DISMISSED.

SO ORDERED.

X x x”

and which, on reconsideration[32] of appellant, was likewise denied,[33] hence this appeal[34] raising the lone error for Our consideration-

THE TRIAL COURT ERRED IN DISMISSING THE CASE ON THE GROUND OF FORUM SHOPPING.[35]

We resolve to deny the appeal.

It is undisputed that appellant sought to intervene in the Petition for Cancellation, reiterating the same allegations in the subject Complaint.[36] Appellant argues however that there was no forum shopping as her Motion and consequently the Complaint in Intervention were denied. She insists that the motion is not an initiatory action, to which a certification of non forum shopping need not be filed.

Forum shopping exists when the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in another. Litis pendentia requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two (2) cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case.[37]

A reading of the Complaint in Intervention and the subject Complaint indubitably shows that there is identity of parties and subject matter, which is the property covered by TCT No. V-35593, as well as causes of action, which is to declare as null and void the Notice of Levy, the Certificate of Sale and Sheriff's Final Deed of Sale. This notwithstanding, the Complaint in Intervention contained the following statement in the Verification and Certification, which reads, -

“X x x

WONG LING LING, after being duly sworn to in accordance with law, depose and say that:

x x x

AND FURTHER CERTIFY, that:

I have not commenced any other action or filed any claim, involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein, if there is such pending action or claim, a complete statement of the present status thereof, and if I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) days therefrom to the court wherein aforesaid complaint or initiatory pleading has been filed. [Emphasis supplied].

X x x”[38]

despite appellant being aware of the identical complaints previously filed by her.

Clearly, appellant has not been truthful in her declaration relative to the pendency of the subject Complaint. There was even no statement made by the appellant disclosing the other complaint's status as required by the Rules of Court.[39]

It is instructive to note the rationale against forum-shopping, thus:

“xxx that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.”[40]

If only to subvert the issue on forum shopping, appellant averred that the motion for intervention was not an initiatory action but a mere motion, which was not allowed and subsequently withdrawn.

There is no distinction.

To quote the case of *Tokio Marine Malayan Insurance Company, Incorporated, et. al. vs. Jorge Valdez, et al.*[41] cited by the appellant in the Brief for Appellant[42] -

“X x x

xxx Forum shopping is the act of a litigant who ‘repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by some other court ... or to increase his chances of obtaining a favorable decision if not in one court, then in another.’ xxx

The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts as it constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.

X x x”

While appellant may have withdrawn her Appeal[43] on the denial of the motion, it was a mere afterthought and made only after the dismissal of the subject Complaint on 25 June 2012.[44] The appellant’s act of intervening in the Petition for Cancellation, although disallowed, constituted pursuing simultaneous remedy in different forum, thus, constitutive of forum shopping. The subsequent withdrawal of the Motion relied upon by the appellant is of no moment and cannot be countenanced, for to do so would undermine the policy and intent of the rule against

forum shopping which appellant certainly violated.

On this score, We agree with the court a quo in its disquisition –

“X x x

The acts of the plaintiff clearly constitute willful and deliberate forum showing, hence, the same is a ground for summary dismissal of the instant complaint.

As correctly pointed out by the defendants, the issue in the cancellation of TCT No. V-35593 which is the subject of LRC No. 75-V-11 will necessarily include the determination of the legality and validity of the procedure and the determination of the legitimacy of the notice of levy, certificate of sale and sheriffs final deed of sale which the herein plaintiff sought to cancel or annul.

X x x”[45]

All told, this Court agrees with the disposition of the court a quo as We find no error committed in issuing the assailed Orders, the same being based on the facts and prevailing jurisprudence on the matter.

WHEREFORE, the appeal is hereby DENIED and the assailed Orders dated 25 June 2012 and 06 August 2012 issued by Branch 172, Regional Trial Court of Valenzuela City are hereby AFFIRMED.

SO ORDERED.

Bato, Jr., R.M., (Chairperson) and Sempio Diy, M.E., JJ., concur.

[1] Rollo, pages 27 to 28.

[2] Id. at 29 to 30.

[3] “Court a quo,” for brevity.

[4] “Appellant,” for brevity.

[5] “Property,” for brevity.

[6] “TCT,” for brevity.

[7] Records, page 07; “title,” for brevity.

[8] Id.

[9] See Notice of Levy upon Realty, Id. 34 to 35, “Annex 3”.

[10] Id. at 32 to 35, NLRC case, for brevity.

[11] “Appellees Necisario and Intoy,” for brevity.

[12] Dorsal portion, Records, page 07.

[13] Id. at 42 to 43, “Annex 8”.

[14] Id. at 48 to 50. “Annex 12”.

[15] Id. at 01 to 05, “subject Complaint,” for brevity.

[16] “NLRC,” for brevity.

- [17] “Appellee Sheriff,” for brevity.
- [18] “RD,” for brevity.
- [19] “Petition for Cancellation,” for brevity.
- [20] “RTC,” for brevity.
- [21] Page 02, Brief for Appellant, Rollo page 21.
- [22] Records, pages 61 to 62; “Motion,” for brevity.
- [23] Id. at 63 to 66, Complaint in Intervention.
- [24] Id. at 84 to 86, “Annex 1”; penned by Presiding Judge Evangeline M. Francisco.
- [25] See Order dated 19 June 2012; Id. at 87 to 88, “Annex 2”.
- [26] See Manifestation and Compliance; Id. at 91 to 92.
- [27] Id. at 93.
- [28] Id. at 20 to 29.
- [29] Arnold Necisario who died on 12 June 2011 is now represented by his wife Vilma D. Necisario, page 54; see Death Certificate, Id. at 59.
- [30] Id. at 54 to 58.
- [31] Id. at 75 to 76.
- [32] See Motion for Reconsideration, Id. at 77 to 79.
- [33] Rollo, pages 29 to 30.
- [34] See Notice of Appeal, Records, page 97.
- [35] See Brief for the Appellant, Rollo, page 20.
- [36] See page 04, Id. at 23.
- [37] Land Bank of the Philippines vs. Honeycomb Farms Corporation, G.R. No. 166259, 12 November 2012.
- [38] Records, page 65.
- [39] See Rule 7, Sec 5 of the Rules of Court on Certification against forum shopping; Rules, for brevity.
- [40] Land Bank of the Philippines vs. Honeycomb Farms Corporation, G.R. No. 166259, 12 November 2012.
- [41] G.R. No. 150107, 28 January 2008.
- [42] Rollo, pages 19 to 26.
- [43] See Order dated 06 July 2012, Records page 93.
- [44] Id. at 75 to 76.
- [45] Id. at 96.

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