

MRS. EDITHA D. FLORES, PETITIONER, VS. HON. DAX GONZAGA XENOS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 34, PANABO CITY, DAVAO DEL NORTE, AND MRS. PRUDENCIA FLORES A.K.A. P...

Ponente: LLOREN, J.

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LLOREN, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court assailing the Order[1] dated July 31, 2012 of the Regional Trial Court, 11th Judicial Region, Branch 34, Panabo City, dismissing the complaint in Civil Case No. CC 31 – 2012 without prejudice. Likewise assailed is the Order[2] dated September 24, 2012 of the trial court denying the motion for reconsideration of the earlier order.

On June 29, 2012, Mrs. Editha D. Flores (petitioner) filed a Complaint[3] for Specific Performance, Notice of Lis Pendens, Damages, Attorney's Fees against Mrs. Prudencia Flores a.k.a. Prudencia Branzuela (respondent). Petitioner pertinently alleged the following:

- That on October 30, 1980, Danilo Flores (now deceased) and I had gotten married, and we lived as husband and wife at Gredu, Panabo, Davao del Norte, Philippines together with my husband's parents, spouses Eulogio Flores and Maria Flores, who both died in Gredu, Panabo in 1989 and in 1982, respectively. x x x

x x x

- On November 4, 1981, our first child named Raymund Flores was born. x x x

- On October 4, 1982, our second child named Mary Gay Flores was likewise born. x x x

- On October 24, 1983, my husband, DANILO FLORES, had died in a vehicular accident in Panabo, Davao del Norte. x x x

- In 1985, the purported second wife of my father-in-law in the person of Prudencia Flores, a.k.a. Prudencia Branzuela, the defendant, lived together with us in the house. x x x

x x x

- That at the time my parents'-in-law (sic), spouses EULOGIO FLORES AND MARIA FLORES had passed away, they owned a parcel of land located at Poblacion Panabo which had been registered in their names, consisting of more than seven (7) hectares with OCT No. P-14871 and Tax Declaration No. 2230, x x x.

- That I have been asking defendant for the owner's-copy (sic) of the Land Title of the afore-cited parcel of land, but defendant neither confirm nor deny that the owner's copy has been in her possession and custody.

- That on March 13, 2012, plaintiff's counsel sent a demand letter, dated March 09, 2012 to defendant through registered mail, enjoining defendant to produce the owner's copy, but until now the demand letter remains unanswered, x x x.[4]

In the first assailed order, the trial court dismissed the complaint without prejudice.

Petitioner filed a Motion for Reconsideration[5] whereby she argued that the trial court could not dismiss the case *motu proprio* without having first summoned respondent to answer the complaint. She claimed that she has a cause of action against respondent. She pointed out that she and her children have rights by succession to the subject land. Also, she pointed out that she received an information that respondent has in the latter's possession the title to the subject land.

In the second assailed order, the trial court denied the motion for reconsideration. It ruled that it could *motu proprio* dismiss outright the complaint citing *Velarde v. Social Justice Society*.[6] It also ruled that the complaint fails to state a cause of action. It pointed out that petitioner, not being a legal heir of the registered owners, does not have a right to demand the return of the title. It also pointed out that respondent has no corresponding obligation to return the title considering that it was not categorically shown that she is in possession thereof.

Petitioner now comes before this Court ascribing grave abuse of discretion on public respondent for issuing the assailed orders.

The petition must be denied.

An appeal may be taken from a judgment or final order that completely disposes of the case. On the other hand, an order dismissing an action without prejudice is not appealable. The aggrieved party, however, may file an appropriate special civil action under Rule 65.[7] Undoubtedly, petitioner has availed of the correct remedy since the dismissal of her complaint is without prejudice. Thus, the remaining question is whether public respondent had acted with grave abuse of discretion.

Petitioner claims that while Rule 16 of the Rules of Court lists the failure of a pleading to state a cause of action as a ground for dismissal of an action, a motion to dismiss must be filed by the defendant who must first be summoned to answer the complaint. She also claims that after receipt of the summons, the defendant is however precluded from filing a motion to dismiss in line with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002. She cites A.M. No. 03-1-09-SC which in part reads:

- Within one day from receipt of the complaint:

1.1 Summons shall be prepared and shall contain a reminder to defendant to observe restraint in filing a motion to dismiss and instead allege the grounds thereof as defenses in the Answer, in conformity with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002.

Petitioner claims that the action of public respondent in dismissing *motu proprio* the complaint without first summoning respondent was contrary to the cited rules and guidelines. She thus contends that public respondent acted with grave abuse of discretion.

The contention has no merit.

The trial court may – *motu proprio* or upon motion of the defendant – dismiss a complaint that does not allege a

cause of action.[8] Clearly, it is within the power of the trial court to dismiss a complaint that fails to allege a cause of action even without having first summoned the defendant. There is no need for the trial court to wait for the defendant to move for dismissal.

A cause of action is the act or omission by which a party violates a right of another.[9] Its elements are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[10]

In the present case, it appears that petitioner succeeded from her deceased husband who in turn succeeded from his deceased mother – one of the registered owners of the subject land. It bears stressing that, as alleged in the complaint, the mother of petitioner's husband died in 1982 while her husband died in 1983 thereby enabling petitioner's husband to inherit from his mother. Accordingly, petitioner has a right to recover the title to the subject land. On the other hand, respondent has the corresponding obligation not to violate petitioner's right. However, the complaint fails to allege the act or omission on the part of respondent in violation of petitioner's right. Hence, the complaint lacks cause of action as it fails to allege all its elements.

Petitioner's allegation that respondent has neither confirmed nor denied having the title in the latter's possession underlines the former's lack of cause of action. Petitioner will only have a cause of action against respondent when it is alleged that the latter has the title in her possession. As alleged, the cause of action against respondent is baseless and speculative. That respondent has the title in her possession is not specifically and categorically alleged. It is uncertain considering that petitioner merely received information that respondent has possession of the title as what was stated in the letter[11] of petitioner's counsel to respondent.

The following is pertinent:

The second cause of action of the amended complaint is made to consist in that the appellants received the information that the defendant, making use of the power which they conferred upon it, mortgaged the hacienda Dos Hermanos to a bank, and after discharging said mortgage by paying the loan, it refused to pay them the bonus which it had promised. It has not been alleged that the appellants personally knew the execution of the mortgage; all that is affirmed is that they had received an information and they made the allegation upon such information; neither has it been alleged mortgage has been formally executed and registered according to law, wherefore, it appears that, the mortgage, as thus alleged, is not valid from the legal standpoint. Taking this allegations into account, we are of the opinion that the court did not err in sustaining the demurrer interposed to the second cause of action because it is evident that the allegations thereof are, at least, vague and uncertain and the defendant is entitled to have the appellants amend their amended complaint so as to make the allegations thereof more categorical, intelligible and specific, to the end that it set out a real cause of action to which the defendant, in turn, may interpose an answer with such special defenses as it may have in its favor.[12]

Grave abuse of discretion is defined as follows:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a

gross misapprehension of facts.[13]

In the present case, petitioner fails to show that the trial court erred, much less acted with grave abuse of discretion, in dismissing the complaint.

WHEREFORE, the instant petition for certiorari is DENIED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Azcarraga-Jacob and Contreras, JJ., concur.

[1] Rollo, p. 52

[2] Id., pp. 65-67

[3] Id., pp. 26-31

[4] Rollo, pp. 27-28

[5] Id., pp. 53-58

[6] G.R. No. 159357, April 28, 2004

[7] Section 1, Rule 41

[8] Velarde v. Social Justice Society; Note 6, supra

[9] Section 2, Rule 2 of the Rules of Court

[10] Relucio v. Lopez, G.R. No. 138497, January 16, 2002 (citation omitted)

[11] Annex L to the Complaint, p. 46

[12] Labayen v. Talisay-silay Co., G.R. No. L-45843, June 30, 1939

[13] UCPB v. Looyuko, G.R. No. 156337, September 28, 2007 (citations omitted)

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