

ADVANCE CREDIT CORPORATION, PETITIONER, VS. HON. LYDIA B. HIPOLITO IN HER CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 23, CABANATUAN CITY AND SPOUSES EDILBERTO TADIAMAN AND MARCI...

Ponente: GUARIÑA III, J.

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GUARIÑA III, J.:

In the name of substantial justice, rules of procedure have been reshaped, qualified, retooled and reinvented. The doctrine of liberal construction which underlies the Rules of Court largely justifies this result. As the doctrine is now stated : The Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive determination of every action and proceeding. This case is one instance where the policy of liberal construction illumines the provisions of a rule beyond their narrow literal implications.

The respondents Edilberto and Marciana Tadiaman took a P130,000 loan from the petitioner Advance Credit Corporation and executed a deed of real estate mortgage to secure it. When the account became due, they went to the office of the petitioner to pay.[1] They were surprised to learn that the loan, inclusive of interest, had ballooned to P515,125. They were consequently unable to settle it at once. The petitioner went on to initiate extra-judicial foreclosure proceedings and acquired the property in a public auction sale held pursuant thereto on June 13, 2000. A certificate of sale was issued to it two days later on June 15.[2]

The respondents strove to raise P515,125 and went back to see the petitioner. Upon recomputation, however, the loan was already P 893,349.55. Unable to redeem the property, they went to court.[3]

They filed, in point of fact, two identical cases against the petitioner one after the other. The first was docketed as case 4041 and came before Branch 23 of the Regional Trial Court of Cabanatuan City. On April 22, 2002, this case was dismissed after the respondents failed to cause the service of summons on the petitioner. The dictamen held : For plaintiff's failure to prosecute this case despite the lapse of considerable length of time, let this case be dismissed.[4]

The complaint[5] in case 4041 is specifically entitled Annulment of Extra-judicial Foreclosure and Damages and seeks the revocation of the extra-judicial foreclosure and certificate of sale issued to the petitioner and halt the expiration of the redemption period on June 13, 2001.[6] It contains the principal averment that a real estate mortgage was executed in October 1997 by the plaintiffs-spouses[7] over property covered by T-66546 to secure a P130,000 loan from the defendant,[8] but which was extra-judicially foreclosed by the defendant in June 2000 for an unjustifiably larger amount. It also alleges that the public auction sale was conducted and the certificate of sale issued by the notary public who is not the officer authorized to execute these acts under an administrative circular of the Supreme Court.

On February 14, 2003, nearly a year after the first complaint was dismissed, the respondents filed another complaint with the RTC of Cabanatuan City which was docketed as case 4445.[9] By happenstance, it was raffled again to Branch 23. The case was entitled Annulment of Real Estate Mortgage, Auction Sale, Certificate of Sale

with Damages, implicating the very proceedings and documents involved in the first case. More irregularities were cited to support the claim that the public auction sale was void. But in addition to pleading the nullity of the proceedings, the respondents took the step of depositing in court P130,000 and asked that the defendant be ordered to accept the money as full redemption price of the land and discharge the mortgage.

Attached to second complaint was a sworn Verification and Certification signed by the respondents in which these statements were made :

“ That We, Edilberto Tadiaman and Marciana Tadiaman, spouses, both of legal ages, Filipinos, and resident of Mayapyap Norte, Cabanatuan City, after having been sworn to in accordance with law do hereby depose and say:

That we are the plaintiff in the foregoing complaint;

That we have read all the contents of the foregoing complaint and found the allegations therein as are true and correct;

That we have not filed any other case of similar nature before the Supreme Court, Court of Appeals, RTC, MTCC, MTC and other court, board, body or agency and if one is found to be filed I will immediately inform the Hon. Court of such fact.”

The petitioner seasonably filed a motion to dismiss this complaint on two grounds – the case was barred by a prior judgment and that the respondents executed a false certification to the effect that they had not filed any case of similar nature with any court, board or agency. It was pointed out that the respondents had filed a previous case 4041 which was identical to case 4445 and was earlier dismissed due to failure to prosecute. Aside from a peremptory dismissal of the present case, the petitioner asked that the respondents be held in contempt of court for committing a deliberate misrepresentation in the certification of non-forum shopping.[10]

The opposition submitted by the respondents was an apologia for the execution of the allegedly false certification and an unabashed suggestion to ignore the mistake as a mere technicality.[11] They excused themselves as simple untutored persons who were only required to sign the complaint in case 4041 without being told of the importance of their act. They allegedly signed the verification and certification in the second case in the honest belief that this was their first case, as it was only in this case where they paid the filing fees and deposited the sum of P130,000 as redemption money.

The court was persuaded. It agreed that the certification which the respondents attached to their complaint in case 4445 obviously failed to state the existence of the prior case 4041. But it also unctuously declared, in an order on April 8, 2003 : Be that as it may, the procedural rule and all the implementing administrative circular(s) undoubtedly wee contrived to facilitate and promote the orderly administration of justice. It should not be interpreted with such absolute literalness as to subvert its own legitimate objective which is to achieve substantial justice as expeditiously as possible.[12] It thus held that the falsity of the certification was no obstacle to the maintenance of the present case. It went on to ascribe responsibility for the false certification to the negligence of the lawyer of the respondents, not realizing that the respondents were themselves the ones who signed the certification.

Finding also that summons in case 4041 was not yet served on the petitioner when it was dismissed for failure to prosecute, the court held that res judicata did not operate to bar the second case. In fine, the motion to dismiss was denied, and with the denial of the motion for reconsideration,[13] the petitioner now resorts to certiorari.

To repeat, the petitioner is of the view that the present case 4445 cannot prosper because the dismissal of case 4041 is with prejudice and the certification of non-forum shopping shopping in case 4445 is false. We resolve this

case in favor of the respondents and affirm the denial of the motion to dismiss on the basis of a more nuanced application of the policy of liberal construction of the rules. Ironically, to reach our conclusions, we have to turn on the very theory espoused by the respondents - that the dismissal of case 4041 is not with prejudice.

As we have noted, there was no summons served on the petitioner in case 4041. The trial court, though, dismissed the case utilizing the famous phraseology failure to prosecute as a ground for the dismissal. Failure to prosecute is contained in Section 3, Rule 17 which also provides the consequence. The provision states that the dismissal shall have the effect of an adjudication upon the merits unless otherwise decreed by the court. The petitioner argues that since the dismissal was not qualified by the court, it must be, under the rule, with prejudice.

The cases have made it clear, however, that we must make a distinction. In *Republic Planters Bank vs. Molina* 166 SCRA 39, a trial court dismissed a civil case for failure of the plaintiff to prosecute within a reasonable length of time. When the plaintiff filed a new case, he was met with the objection that the case was barred by res judicata. The trial court dismissed the case believing that the dismissal of the first case had the effect of an adjudication on the merits because, in line with the rule, it was unconditional. The lack of jurisdiction of the court over the defendant due to the non-service of the summons was of no moment.

The High Court did not agree. It observed that to dismiss a case with prejudice is to dispose of the case on the merits, an authority the trial court did not yet have because it had no jurisdiction over the person of the defendant for lack of service of summons. Hence, despite the fact that the plaintiff had failed to prosecute the case by not causing seasonable service of the summons, the court cannot dismiss the case with prejudice. If, at all, the dismissal must be construed as without prejudice.

The principle that no order of dismissal can have the effect of an adjudication on the merits where the court has not acquired jurisdiction over the defendant is reaffirmed in *Gardose vs Tarroza* 290 SCRA 186. There, the Supreme Court allowed a second case to prosper after the first was dismissed for failure of the plaintiff to have the summons served within a reasonable time, a dilatory act concededly amounting to failure to prosecute.

Under existing jurisprudence, then, case 4445 may not be dismissed simply because case 4041 was earlier dismissed for failure to prosecute but where summons was not yet served. It is the absence of the bar of res judicata that, serendipitously, is also determinative of the second issue of this petition.

Section 5, Rule 7 states that it is incumbent upon a party filing a case to certify under oath that he has not commenced any other action involving the same issues in any court or tribunal and that if he has, to report it to the court. The failure to comply with this requirement is expressly made a cause for the dismissal of the case. But as in failure to prosecute, the requirement of a full disclosure of a previous case that has been dismissed is limited to suits where the defendant has already come under the jurisdiction of the court. A case that was dismissed when the court had not yet acquired jurisdiction over the defendant because summons was still unserved is not one that needs to be reported when the second is filed.

We may draw this conclusion from the rulings in *Roxas vs Court of Appeals* 363 SCRA 207 and *Barcelona vs Court of Appeals* 412 SCRA 41, where the dismissal of the first case happened before the summons was served or, at any rate, before the service of the answer. There was as between the first and second case no *litis pendencia* because the first case was already terminated when the second was filed, and no res judicata since the first case was dismissed without prejudice. As stated in *Roxas*, an omission in the certificate of non-forum shopping about any event that would not constitute res judicata and *litis pendencia* is not fatal as to merit the dismissal of the second case, the reason being that the evils sought to be prevented by the certification are not present where there is no res judicata or *litis pendencia* between the cases.

The Supreme Court held that these disquisitions are justified by a policy of liberal interpretation of the rules, a standard that in *Maricalum Mining Corporation vs National Labor Relations Commission* 298 SCRA 378, is said to be more in keeping with objective of the rules to secure a just, speedy and inexpensive determination of an action or proceeding. The absence of an occasion for *res judicata* to apply to the present case is the lack of service of summons on the defendant in the previous case. It is, therefore, inconsequential if the first case was not mentioned by the respondents in the second case.

We find no reason to reverse the ruling of the court a quo denying the motion to dismiss.

IN VIEW OF THE FOREGOING, the assailed orders of April 8, 2003 and May 20, 2003 are AFFIRMED, and the petition is DISMISSED.

SO ORDERED.

Barrios, (Chairman) and Romilla-Lontok, JJ., concur.

[1] Rollo, at 26-32. The deed of mortgage was dated October 29, 1997 and covered a parcel of land at Cabanatuan City registered in the name of the respondents and minors surnamed Tadianan as TCT No. T-66546.

[2] Ibid., at 35-37.

[3] Ibid., at 21, 34.

[4] Ibid., at 7.

[5] Ibid., at 43-46.

[6] This is how we understand the following fractured passage in the dispositive portion of the complaint : ...and ordering that the period of redemption be stop and enjoin to enforce starting June 13, 2001...

[7] The respondents.

[8] The petitioner Advance Credit Corporation.

[9] Rollo, at 20-24.

[10] Ibid., at 38-42.

[11] Ibid., at 52-55.

[12] Ibid., at 56-58.

[13] Ibid., at 70-73. The order was dated May 20, 2003.

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