

DALE B. CHIONG AND GIL B. CHIONG, PETITIONERS, VS. THE HONORABLE REYNERIO G. ESTACIO, AS PRESIDING JUDGE OF BRANCH 14 REGIONAL TRIAL COURT OF ZAMBOANGA CITY; CENTRADE DEVELOPMEN...

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SANTOS, J.:^[1]

This is a Petition for Certiorari^[2] under Rule 65 of the Rules of Court seeking to set aside the Order^[3] dated 19 January 2012 of the Regional Trial Court (RTC), Branch 14, Ninth Judicial Region, Zamboanga City, in Civil Case No. 6322 dismissing the same for failure of petitioners to appear for pre-trial and to submit their pre-trial brief; and the Order^[4] dated 18 May 2012 denying their Omnibus Motion for Reconsideration, and To Admit Pre-Trial Brief.^[5]

The Antecedents

Petitioners Dale B. Chiong and Gil B. Chiong (petitioners) are the brothers of private respondents Grace B. Chiong (Grace) and Jeanne B. Chiong (Jeanne), all of them being the legitimate children of private respondents Spouses Fernando L. Chiong and Amelia B. Chiong (Spouses Chiong).^[6]

On 02 October 1996, the above-enumerated parties executed an Extra-Judicial Deed of Partition^[7] over 22 parcels of land individually covered by titles in the name of the Spouses Chiong, whereby the latter allegedly for the purpose of terminating the existing community of ownership between them, “bequeath the entire estate xxx in favor of the [children],” dividing and adjudicating the properties to them, with the intention of physically partitioning the same.^[8]

Subsequently, petitioners filed a Complaint, later an Amended Complaint dated 04 August 2011, for reconveyance and damages against their parents, Chiong Spouses, and their sisters, private respondents Grace and Jeanne,^[9] allegedly because, without their (petitioners’) knowledge and consent, one of the properties subject of the Extra-Judicial Deed of Partition, i.e., the parcel of land covered by Transfer Certificate of Title (TCT) No. T-128,946, was mortgaged sometime in June 1997 by private respondent Grace, as attorney-in-fact of Spouses Chiong, in favor of private respondent Bank of the Philippine Islands (BPI), which the latter foreclosed and subsequently sold to private respondent Centrade Development Corporation (Centrade). The latter succeeded to have the subject property registered in its name, i.e., TCT No. 222,200. Allegedly constituting a violation of the Extra-Judicial Deed of Partition, petitioners assail the validity of the title acquired by Centrade because the Spouses Chiong allegedly were no longer the owners of the subject property when the mortgage was constituted.^[10]

Private respondent BPI filed its Answer dated 05 August 2011^[11] while private respondent Centrade’s Answer was dated 05 October 2011.^[12] Private respondents Chiongs’ Answer dated 10 October 2011, although filed late and covered by a Manifestation and Motion to Admit Answer,^[13] was admitted by the trial court in its Order^[14] dated 17 November 2011 that also, at the same time, set the case for pre-trial on 19 January 2012.

On 27 December 2011, petitioners' counsel filed an Urgent Motion to Cancel and Reset Hearing, with the following pertinent allegations:

- That the instant case is set for Pre-trial on January 19, 2012, at 8:30 o'clock in the morning.
- Unfortunately, the undersigned counsel for the plaintiffs is not available on said date because it happened to coincide with the 10th death anniversary of his mother, which he has to attend as a matter of family tradition.
- That in view of such circumstance, the undersigned counsel is left with no other option but to pray for a cancellation of hearing and for a resetting to another date. xxx[15]

In spite receipt by the trial court of the abovequoted Motion, it issued the assailed Order dated 19 January 2012 dismissing the case, which Order, in its entirety, reads:

When this case was called for Pre-Trial this morning, neither the plaintiffs nor their counsel, appeared. While there may be on record a Motion for Postponement filed by the counsel for the plaintiffs, the ground alleged therein that he has to attend the 10th death anniversary of his mother, is no excuse at least, for the plaintiffs themselves to appear in today's Pre-Trial, or even to file their pre-trial brief at least three (3) days before the date of the Pre-Trial.

Hence, upon motion of the counsel for the defendants, the instant case is hereby dismissed pursuant to Section 4, in relation to Sections 5 and 6, Rule 18 of the Revised Rules of Court."

SO ORDERED.[16]

Consequently, petitioners filed an "Omnibus Motion for Reconsideration, and to Admit Pre-Trial Brief,"[17] which drew Oppositions from private respondents Chiongs[18] and Centrade,[19] to which petitioners filed their Consolidated Reply.[20]

In the other assailed Order of 18 May 2012, the trial court denied petitioners' Omnibus Motion for Reconsideration in this wise:

After a thorough consideration of the grounds alleged in the plaintiffs' Omnibus Motion for Reconsideration and the defendants' opposition thereto, the court finds no cogent reason to reconsider its Order dated January 19, 2012.

Plaintiffs' contention that motions to dismiss take precedence over pre-trial is untenable. For the grounds of a motion to dismiss, including those alleged as affirmative defenses in the answers, can better be taken up during the pre-trial, and altogether, thereafter, resolved.

WHEREFORE, for lack of merit, the OMNIBUS Motion for Reconsideration, is DENIED.

SO ORDERED.[21]

Dissatisfied, on 25 July 2012, petitioners filed the instant petition, followed by a Supplement to Petition for Certiorari filed on 13 August 2012, purportedly to submit certified copies of the trial court's Orders assailed before this Court.[22]

Private respondents Chiong and Centrade filed their respective Comments on the petition,[23] while private respondent BPI adopted Centrade's Comment as its own.[24]

Thereafter, the parties submitted their respective Memoranda.[25] Then, this Court referred the instant case for mediation.[26] When mediation efforts failed, the case was returned to this Court for continuation of proceedings.[27]

The Issues

Petitioners raise the following as the issues to be resolved in the instant petition, viz.:

- RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT DISMISSED THE CASE FOR FAILURE OF PETITIONERS TO APPEAR BY THEMSELVES DURING THE SCHEDULED PRE-TRIAL ON 19 JANUARY 2012, AND FOR FAILURE TO FILE PRE-TRIAL BRIEF, DESPITE THE FACT THAT THEIR COUNSEL HAS EARLIER FILED A MOTION TO CANCEL AND RESET THE SCHEDULED PRE-TRIAL HEARING, AND DESPITE THE FACT THAT THE COURT FAILED TO ISSUE THE REQUIRED NOTICE OF HEARING IN ACCORDANCE WITH THE FORM PRESCRIBED IN A.M. NO. 03-1-09-SC; RE: GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES.
- RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT INSISTED ON PROCEEDING TO PRE-TRIAL DESPITE THE PENDING MOTION TO DISMISS FILED BY COUNSEL FOR RESPONDENT CENTRADE DEVELOPMENT CORPORATION, AND DESPITE THE TIMELY FILED MOTION TO CANCEL AND RESET HEARING BY COUNSEL FOR PETITIONERS.[28]

This Court's Ruling

For failure to appear by themselves during the scheduled pre-trial on 19 January 2012, and to file the required pre-trial brief, the trial court dismissed Civil Case No. 6322, to the dismay of petitioners. Asserting that their counsel had timely filed a Motion to Cancel and Reset the pre-trial, aside from the trial court's alleged failure to send them a proper notice of pre-trial, petitioners ascribe grave abuse of discretion upon the trial court for dismissing their case against private respondents.[29]

At the outset, it must be stated that by resorting to the instant action, petitioners have availed of the wrong mode of judicial review. It is a well-settled rule that a dismissal for failure to appear at the pre-trial hearing, with the plaintiff declared non-suited for failure to prosecute thereby ensuing to the dismissal of the complaint, is deemed an adjudication on the merits, unless otherwise stated in the order.[30] Such is the situation in the case at bar.

The remedy of certiorari does not lie to question the trial court's Order of 19 January 2012 dismissing petitioners' case. The rationale for this ruling was aptly elucidated in the case of *Chingkoe v. Republic*,[31] thus:

Respondent's Petition for Certiorari filed before the CA was not the proper remedy against the assailed Order of the RTC. Pursuant to Rule 65 of the Rules of Court, a special civil action for certiorari could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction" or when it acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is settled that the Rules precludes recourse to the special civil action of certiorari if appeal by way of a Petition for Review is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.

Here, respondent cannot plausibly claim that there is no plain, speedy, and adequate remedy available to it to question the dismissal Order of the trial court. The RTC Order does not fall into any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. It is clear from the tenor of the RTC's July 14, 2006 Order that it partakes of the nature of a final adjudication, as it fully disposed of the cases by dismissing them. In fine, there remains no other issue for the trial court to decide anent the said cases. The proper remedy, therefore, would have been the filing of a Notice of Appeal under Rule 41 of the Rules of Court. Such remedy is the plain, speedy, and adequate recourse under the law, and not a Petition for Certiorari under Rule 65, as

respondent here filed before the CA.

A petition for certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. When an appeal is available, certiorari will not prosper, even if the basis is grave abuse of discretion. The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, an ordinary appeal was the proper remedy. (citations omitted)

Similar to the ruling in the above-cited case, petitioners have not shown that the assailed Order of the RTC falls under any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. Hence, had this Court dismissed the instant petition outright, it is confident that it cannot be faulted on that score.

Be that as it may, in order to put this issue to rest once and for all, this Court will nevertheless proceed to look into the central issue of this petition which is the propriety of the trial court's order of dismissal.

The factual milieu of the instant case is that on 17 November 2011, the trial court issued the Order setting Civil Case No. 6322 for pre-trial on 19 January 2012.[32] Then, petitioners' counsel filed on 27 December 2011 an Urgent Motion to Cancel and Reset Hearing on the ground that he "is not available on said date because it happened to coincide with the 10[th] death anniversary of his mother, which he has to attend as a matter of family tradition." He then prayed that the 19 January 2012 setting be cancelled, and be reset to a later date.[33]

The trial court, notwithstanding receipt of the Motion to Reset Hearing, found the ground therein as not sufficient to justify the failure of "the plaintiffs themselves to appear in today's Pre-Trial, or even to file their pre-trial brief at least three (3) days before the date of the Pre-Trial." Consequently, upon motion of the private respondents, the trial court dismissed the case "pursuant to Section 4, in relation to Sections 5 and 6, Rule 18 of the Revised Rules of Court." [34] Despite petitioners' Omnibus Motion for Reconsideration and to Admit Pre-Trial Brief,[35] the trial court stood pat on its dismissal order of 18 May 2012.[36]

Sections 3, 4, 5 and 6, Rule 18 of the Rules of Court provide, thus:

Sec. 3. Notice of pre-trial. The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

Sec. 4. Appearance of parties. It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Sec. 5. Effect of failure to appear. The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

Sec. 6. Pre-trial brief. The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

xxx

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Under the above-cited provisions, non-appearance at the pre-trial can only be excused under two exceptions: (1) a

valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[37]

In the instant case and based on the foregoing provisions, petitioners committed the following violation of the Rules which, singly or taken together, would justify the dismissal of the case, viz.: petitioners and their counsel of record were not present at the scheduled pre-trial conference; the reason proffered to justify their absence was not compelling or emergency in nature so as to constitute a valid excuse; petitioners' counsel failed to discharge his duty to notify or advise his clients to attend the hearing or send an authorized representative; and, they did not file a pre-trial brief.

Rule 18 of the Rules of Court leaves no room for equivocation; appearance of parties and their counsel at the pre-trial conference, along with the filing of a corresponding pre-trial brief, is mandatory. Failure to comply therewith, in the absence of any of the two (2) exceptions cited above, as in the instant case, inevitably ensues to the dismissal of the case.

Notwithstanding that the 19 January 2012 hearing in the present case was merely the first scheduled date for the pre-trial conference, hence, a single instance of non-appearance, the same does not constitute an exception from the application of rules. In the case of *Durban Apartments v. Pioneer Insurance*[38] where petitioner likewise failed to attend the very first scheduled pre-trial conference and sent a representative to attend the same albeit without the required authority, dismissal of the case was held to be proper. That being so, there is all the more reason to adopt that ruling in the instant case where no representative was sent to the hearing, but only a motion for resetting founded on an excuse, which on its face, clearly did not constitute a valid and compelling one.

It is a well-settled principle that what constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge. Petitioners in the instant case could not question the trial court's discretion absent any showing that it was done whimsically or capriciously.[39] While this Court does not disparage or deprecate long-held family traditions of getting together during death or birth anniversaries, as is the reason propounded by petitioners' counsel, the trial court cannot be blamed for ruling that it was not a valid excuse in the absence of any showing that it partook the nature of what is considered compelling or emergency in nature so as to justify non-appearance in the pre-trial where presence is mandatory. Even assuming *arguendo* that there was a good excuse for the absence of the counsel, nothing in the records show a valid reason for the absence of petitioners themselves who are the principal parties in the pre-trial.

Worse, the lack of a valid excuse was compounded by the failure to file a pre-trial brief. By failing to timely submit the required pre-trial brief, petitioners exhibited not only their disregard for the rules but a lack of preparedness to tackle the important subjects assigned by law to be taken up during pre-trial, e.g., simplification of issues, possibility of settlement, referral to a commissioner, and so forth. It bears no need to stress that when a party is unequipped with the required pre-trial brief or fails to submit one, the same would unavoidably delay the disposition of the case; thus, the law has ascribed upon it the same dire consequence of dismissal of the case similar to the failure to appear during the pre-trial. Failure to file the pre-trial brief warranted the same effect because the rules dictate that failure to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial. Even assuming *arguendo* that petitioners' counsel failed to inform them of the scheduled pre-trial, settled is the rule that the negligence of a counsel binds his clients. Thus, neither petitioners nor their counsel can now evade the effects of their misfeasance.[40]

Petitioners challenge the dismissal order of the trial court allegedly on the basis that the notice of pre-trial was not in due form.[41] To support the same, they invoke the ruling in *Agulto v. Tecson*.[42] The facts of the latter,

however, are not on all fours with the present case. In the case of *Agulto*, there was a total lack of notice of pre-trial thereby rendering the proceedings void. In the instant case, however, what petitioners are raising in issue is the alleged failure of the notice to comply with the proper form of a notice of pre-trial. The absence of notice is one thing while a defective form of notice is another. Since what petitioners are assailing is the form of the notice, the consequence of rendering all proceedings null and void as held in *Agulto* cannot apply here where there was obviously a notice of pre-trial served on the parties' counsels. Besides, a perusal of the subject notice[43] of pre-trial in this case which indicated the date, time and place of pre-trial, is deemed sufficient notice. Ironically, even *Agulto* states that the date, time and place of hearing are the mandatory items to be stated in a proper notice in order to be compliant with the party's right to due process.

As to petitioners' contention that private respondent *Centrade's* Motion to Dismiss should have been resolved first prior to the pre-trial in dispute,[44] this is a non-sequitur. As clearly stated in private respondent *Centrade's* Comment[45] on the petition, it did not file a motion to dismiss but only sought a hearing of the affirmative defenses contained in its Answer. It was therefore misleading for petitioners to argue that the Motion to Dismiss should have been resolved first before the pre-trial, the former allegedly taking precedence over the latter. Besides, even assuming for the sake of argument that the affirmative defenses raised in private respondent *Centrade's* Answer were contained in a separate Motion to Dismiss, the same would not affect the pre-trial since the grounds therein are not on jurisdictional issues but only for failure to state a cause of action.[46] As such, the trial court was correct in holding that such affirmative defenses "can better be taken up during the pre-trial, and altogether, thereafter, resolved." [47]

All told, contrary to petitioners' position, petitioners brought upon themselves the adverse consequences arising from their act of taking very lightly their responsibility as plaintiffs in Civil Case No. 6322, and in the process, disregarded the rules anent pre-trial. The importance of pre-trial in civil actions cannot be overemphasized. Jurisprudence has invariably held that pre-trial cannot be taken for granted for it is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation.[48] The words of former Chief Justice Andres R. Narvasa's continue to resonate, thus:

Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence, it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.[49]

Moreover, since the present petition is one for certiorari, it can only prosper upon a showing that the trial court acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[50] A writ of certiorari is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts – acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts.[51] Surely, the trial court's order of dismissal by merely following the provisions of Rule 18 of the Rules of Court does not constitute the grave abuse of discretion contemplated by law to justify a writ of certiorari. Especially since, as already discussed, petitioners erroneously availed of a petition for certiorari as a mode for judicial review, all the more gives this Court compelling reason to dismiss the same and affirm the assailed Resolutions.

WHEREFORE, the instant petition is hereby DISMISSED for want of merit.

SO ORDERED.

Lloren, J., Ch., and Contreras, JJ., concur.

[1] The case was unloaded to the undersigned ponente pursuant to Office Order No. 03-14-JMBP dated 01 April 2014 as part of his initial caseload.

[2] Rollo, pp. 2-38.

[3] Id. at 42, Annex A, Petition.

[4] Id. at 43, Annex B, Petition.

[5] Id. at 44-49, Annex C, Petition.

[6] Id. at 10, Petition.

[7] Id. at 72-83.

[8] Id. at 78, 83.

[9] Id. at 53; The Amended complaint states that Jeanne B. Chiong was one of the plaintiffs in the original complaint but because she withdrew her consent to sue the Spouses Chiong, she was impleaded in the Amended Complaint as a defendant by reason of being an unwilling plaintiff.

[10] Id. at 61-66.

[11] Id. at 87-94.

[12] Id. at 98-102.

[13] Id. at 105-113.

[14] Id. at 131.

[15] Id. at 116-117.

[16] Id. at 42.

[17] Id. at 44-50.

[18] Id. at 119-121.

[19] Id. at 122-125.

[20] Id. at 126-130.

[21] Id. at 43.

[22] Id. at 134-139.

[23] Id. at 141-143, 145-153.

[24] Id. at 157.

[25] Id. at 187-205, 208-223.

[26] Id. at 234-235.

[27] Id. at 240, 242.

[28] Id. at 28.

[29] Rollo, pp. 28-37.

[30] Mondoneda v. Court of Appeals, G.R. 113349, 18 January 1996.

[31] G.R. No. 183608, 31 July 2013.

[32] Rollo, p. 131.

[33] Id. at 116-118.

[34] Id. at 42.

[35] Id. at 44-49.

[36] Id. at 43.

[37] Section 4, Rule 18, Rules of Court.

[38] G.R. No. 179419, 12 January 2011.

[39] Khongjun v. United Coconut Planters Bank, G.R. No. 154334, 31 July 2006.

[40] Benavidez v. Salvador, G.R. No. 173331, 11 December 2013.

[41] Rollo, pp. 33-37.

[42] G.R. No. 145276, 29 November 2005.

[43] Rollo, p. 131.

[44] Id. at 30.

[45] Id. at 152.

[46] Id. at 99, Answer of Centrade.

[47] Id. at 43, Annex B, Petition.

[48] Philamlife v. Enario, G.R. No. 182075, 15 September 2010.

[49] Durban v. Pioneer, *supra* at Note 38.

[50] Villanueva v. Palawan Council for Sustainable Development, Inc., G.R. No. 178347, 25 February 2013.

[51] Boston Equity Resources, Inc. v. Court of Appeals, G.R. No. 173946, 19 June 2013, citing *Indiana Aerospace University v. Commission on Higher Education*, G.R. No. 139371, 04 April 2001.

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