

HON. FLORENCIO A. RUIZ, JR., SENT OF GOD FOUNDATION, INC., S OF G FOUNDATION, INC., RAUL G. FORES, SENEN P. VALERO AND FATHER ODON DE CASTRO, VS. THE HON. COURT OF APPEALS, SPS....*G.R. No. 101566. March 26, 1993*

Ponente: GRIÑO-AQUINO, J.

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The private respondents, spouses Olegario Orbeta and Susana Rosario S. Orbeta, have filed a motion for reconsideration of the decision dated August 17, 1992 of this Court which reversed the decision of the Court of Appeals[1] granting the petition for certiorari in CA-G.R. SP No. 17013, "Spouses Olegario Orbeta and Susana Rosario S. Orbeta, petitioners vs. Hon. Florencio A. Ruiz, Jr., et al." and upholding, on procedural grounds, the orders of the Regional Trial Court of Ilocos Sur, dismissing the Crisologos' complaint and the Orbetas' answer with cross claim, in Civil Case No. 313-KC, entitled "Carmeling P. Crisologo, et al., vs. Sent of God Foundation Inc., et al."

This is a splinter case arising from the complaint filed on July 29, 1988 by Carmeling P. Crisologo and her children for revocation of two (2) deeds of donation: (a) the first was a donation made on September 17, 1976, of a 100-hectare island in Cabugao, Ilocos Sur; and (b) the second was a donation of two (2) lots in Guimod, San Juan, Ilocos Sur, to the Sent of God Foundation, Inc., which was represented in both transactions by Carmeling's niece, Susana Rosario Orbeta, and her husband, Olegario Orbeta, who were members of the Sent of God Foundation, Inc., otherwise known as the Caryana Movement, a religious cult headed by a Benedictine monk, Father Odon de Castro, as the group's spiritual director. The donations were subject to three (3) conditions imposed by the donors, to wit:

- (1) that the donated land shall be used exclusively to provide a monastic life and experience according to the rules of St. Benedict, and for such other religious and charitable purposes as maybe determined by the donee;
- (2) that the donee shall not sell, lease or allow the use of the parcels of land donated or any part thereof for any other purposes; and
- (3) that in the remote event that the donee no longer needs the property for its religious and charitable purposes, the same shall revert to the donors or their heirs.

Ten years later, on November 7, 1986, the Sent of God Foundation, Inc., represented by its chairman of the board of trustees, Dr. Raul Fores, with the consent of the donors, transferred the Puro-Salomague Island (renamed St. Benedict Island by Fr. Odon de Castro) to the S of G Foundation, Inc., represented by Senen P. Valero, subject to the same conditions as the original donation.

Unfortunately, the Caryana Movement was denied canonical recognition and its spiritual director was himself expelled from the Benedictine order and stripped of his priestly functions by the Archbishop of Manila, Jaime Cardinal Sin.

Disturbed by these developments, for one of the conditions of her donation to the Movement was that the Island would be used "to provide a monastic life and experience according to the rules of St. Benedict," Mrs. Crisologo wrote a letter on February 8, 1988 to Dr. Fores, asking for the return of her island. Dr. Fores assured her that the papers would be prepared for that purpose. On February 23, 1988, she wrote another letter to Dr. Fores reminding him of his promise to return the Island and offering to reimburse the Foundation for its improvements on the island. Dr. Fores asked for a conference with Mrs. Crisologo to hasten the return of the island to her. But shortly thereafter, in the same month of February, 1988 and continuing up to March, the Sent of God Foundation, Inc. and S of G Foundation, Inc., abandoned Puro-Salomague Island. Their agents destroyed and demolished almost all the improvements thereon.

A third letter dated March 9, 1988 was written by Mrs. Crisologo, addressed to Mrs. Concepcion (Chit) Feria, a member of the Sent of God Foundation, Inc., reiterating her request for the return of the island, but nothing happened.

On July 29, 1988, Mrs. Crisologo and her children filed a complaint (Civil Case No. 313-KC, Regional Trial Court, Branch 24, of Cabugao, Ilocos Sur) against the Sent of God Foundation, Inc., the S of G Foundation, Inc., Raul G. Fores, Senen P. Valero, Fr. Odon de Castro and Spouses Olegario and Susana Rosario S. Orbeta for the revocation of the donation and the return of the island to the donors.

In their answer dated August 30, 1988, the defend-ants (except the Orbetas) admitted the donations but denied that they had violated the conditions thereof. They further alleged that the Crisologos had no basis for revoking the donations because canonical recognition is not required for a lay community to live a Christian life in accordance with the rules of St. Benedict; that the expulsion of Fr. Odon de Castro from his Order is pending review by the authorities in Rome; and that the circular of the Archdiocese of Manila disallowing him to perform priestly functions was already known to the Crisologos when they gave their consent to the donation of the island to the S of G Foundation, Inc., to which the island was transferred because the S of G Foundation is a qualified tax-exempt donee. They alleged that they did not destroy, but only "dismantled," their improve-ments on the island preparatory to the transfer of the group to Sabang in order to avoid harassment by Susana Orbeta who had been expelled by the Sent of God Founda-tion, Inc., allegedly for violating the rule of poverty of St. Benedict. They admitted Dr. Fores' promise to return the island to the Crisologos but gave reasons for the delay in effecting the reconveyance, among which was the legal problem allegedly raised by dispossessed farmers. They denied that they abandoned the island for they merely transferred from the upper portion thereof to the lower portion where the rule of poverty may be more properly observed. Their answer contained a counterclaim for attorney's fees and expenses of litiga-tion. They prayed that the complaint be dismissed, or, in the alternative, that the Crisologos and the Department of Agrarian Reform be compelled to interplead their claims to the island.

Plaintiffs filed an answer to the counterclaim on September 22, 1988.

The Orbetas filed a separate Answer with Crossclaim on September 30, 1988, making common cause with the plaintiffs. They alleged that in January 1976, Fr. Odon de Castro instructed Mrs. Orbeta to look for an ideal place in Ilocos Sur to house the monastery of the Caryana Movement, so she thought of approaching her aunt, Mrs. Crisologo, who is a devout Catholic and devotee of St. Benedict, and who is considered one of the biggest landowners in Ilocos Sur. Even if she had not met Fr. Odon, Dr. Fores, and Senen Valero, pillars of the Sent of God Foundation, Inc., Mrs. Crisologo was persuaded by Mrs. Orbeta to give her Puro-Salomague Island for the use of the Caryana Movement. Upon inspection by Fr. Odon, the island was found suitable for the purposes of the movement, but since the Sent of God Foundation, Inc., did not have money to buy it, Mrs. Orbeta persuaded her aunt to donate it to the Foundation subject to certain conditions already mentioned in the complaint. The Orbetas confirmed that the Foundation violated the conditions of the donation when it was denied canonical permission to

teach the monastic life according to the rules of St. Benedict. The Orbetas joined the plaintiffs' demand for the reversion of the island to the donors. The Orbetas further alleged that because of the "misrepresentation, deceptions, question-able practices and heretical teachings of defendant Fr. Odon de Castro, they (Orbetas) disassociated themselves from the Caryana Movement; that as the denial of church recognition for the Caryana Movement and the dismissal of Fr. Odon de Castro, as a Catholic monk of the Bene-dictine Order, violated the conditions of the donations, the Orbetas alleged that they have a legal obligation to return the island to the plaintiffs; and that the alleged protest of the farmers is a concoction of the Foundations to delay the return of the island to the Crisologos for the tenancy case between some farmers and Mrs. Crisologo had been settled in 1980 yet, by an Order dated May 28, 1980 of the Minister of Agrarian Reform.

The Orbetas asserted a cross claim against their co-defendants for moral and exemplary damages and ex-penses of litigation because the refusal of the Founda-tions to reconvey the island to the Crisologos caused the Orbetas to be dragged into this case, and has put them (Orbetas) "in a bad perspective" (p. 148, Rollo). They prayed that judgment be rendered for the plaintiffs and that the Foundations and their co-defendants be ordered to pay damages.

On November 24, 1988, the Foundations, etc. filed a "Motion to Dismiss Crossclaim (of the Orbetas) and to Strike Out."

On December 5, 1988, the Foundations, etc. (except the Orbetas) filed a "Motion to Dismiss and to Drop Defendants," alleging that: (1) the complaint states no cause of action against the Foundations because they did not violate the conditions of the donation; and (2) the individual defendants (Fores, Valero and Fr. De Castro) are not real parties in interest for they merely acted for the Foundations which have legal personalities separate from their officers. Furthermore, the original deeds of donation in favor of the Sent of God Founda-tion, Inc. have already been cancelled by the execution of a third deed of donation by the Sent of God Founda-tion, Inc. in favor of the S of G Foundation, Inc., with the consent of the plaintiffs. The motion was set for hearing on December 16, 1988 at 2:00 p.m.

A copy of the motion to dismiss was received by the secretary of plaintiffs' counsel, Attorney Eduardo Alcantara, on December 14, 1988, or one day short of the reglementary 3-day notice. On January 2, 1989, Attorney Alcantara, who was in Manila when the motion was re-ceived in his office in Vigan, filed an "Explanation and Vigorous Opposition to the Motion to Dismiss and Drop Defendants." However, on the same date, Judge Florencio A. Ruiz, Jr. issued an Order overruling the Opposition for "having been filed out of time" and dismissing the complaint because "the grounds alleged in support there-of (are) meritorious, even as no timely opposition to defendants' motion to dismiss had been filed by any of the adverse parties on or before the scheduled date and time of hearing thereon . . ." The Orbetas' cross claim was also dismissed because it had "no more leg to stand on." (p. 160, Rollo.)

On January 12, 1989, the plaintiffs filed a motion for reconsideration, which was adopted by the Orbetas in an urgent ex parte manifestation dated February 7, 1989. This motion was denied on February 8, 1989. The Criso-logos then sought a review of the order of dismissal by the Court of Appeals through a petition for certiorari under Rule 65 of the Rules of Court, alleging grave abuse of discretion on the part of the trial court. Docketed as CA-G.R. No. SP-16837, it was dismissed on May 2, 1989[2], on the ground that the proper remedy was an ordinary appeal. The appellate court ruled that "since the petitioner did not appeal the questioned order of January 2, 1989, of respondent court dismissing the complaint, said order had become final and executory." (p. 42, Rollo.)

The Orbetas who had not joined the Crisologos in CA-G.R. No. SP-16837, filed their own petition for certiorari in

the Court of Appeals where it was docketed as CA-G.R. SP No. 17013. Their petition prospered. On September 28, 1990, the Court of Appeals[3] annulled Judge Ruiz's order of dismissal and reinstated the complaint. Reconsideration of this decision was denied on August 27, 1991. The Foundations, etc. appealed to this Court which, as previously stated, reversed the Court of Appeals.

The Orbetas filed a motion for reconsideration of our decision. The Court denied it by resolution dated October 21, 1992. However, the Orbetas filed a timely Motion to Recall that resolution. They invited the court's attention to the fact that the resolution denying their motion for reconsideration did not carry the necessary votes of three (3) justices for only Justices Cruz and Aquino voted on it as Justice Bellosillo took no part and Justice Medialdea was on sick leave of absence, when the motion for reconsideration was deliberated upon.[4] Consequently, the Division decided to refer the case to the Court En Banc which recalled the resolution for lack of the necessary votes and constituted a Special First Division[5] to deliberate on the Orbetas' motion for reconsideration.

After a careful review and study of the records, the Court finds merit in the motion for reconsideration. The Court of Appeals did not commit a reversible error in setting aside the orders of Judge Florencio A. Ruiz, Jr. granting the motion to dismiss the complaint in Civil Case No. 313-KC because:

- (1) Judge Ruiz gravely abused his discretion in proceeding to hear and grant the motion to dismiss of the defendants (except the Orbetas) without the requisite 3-day notice to the plaintiffs; and
- (2) The Orbetas are proper parties-in-interest to seek a review on certiorari of the trial court's order dismissing the complaint in Civil Case No. 313-KC.

The trial court gravely abused its discretion in issuing the order of dismissal because the plaintiffs were given only two (2) days' notice (the Orbetas none at all) of the hearing of the motion to dismiss. The notice was received in the office of the plaintiffs' counsel (not by counsel himself) on December 14, 1988. The motion was heard on December 16, 1988.

The motion to dismiss was filed after the defendants had already answered the complaint. Having already filed their answer, the Foundations were estopped from filing a motion to dismiss the complaint, for a motion to dismiss should be filed "within the time for pleading," i.e., within the time to answer (Sec. 1, Rule 16, Rules of Court).

The allegation of the defendants (except the Orbetas) that the complaint did not state a cause of action was not a proper ground to dismiss it for said defendants could not have joined issue upon the material allegations of the complaint if the same did not state a sufficient cause of action against them. A careful perusal of the complaint of the Crisologos, and the Orbetas' "answer," shows that the elements of a cause of action are pleaded therein.

While the Orbetas were impleaded as defendants in the action, together with the Foundations, Fr. Odon de Castro, Dr. Raul G. Fores, and Senen Valero, they filed a separate answer making common cause with the plaintiffs. Their answer included a cross claim for damages against their co-defendants. Their answer with cross claim was, in effect, a complaint against the Sent of God Foundation, Inc. and the other defendants. This peculiarity of their pleading could not have been missed by the trial court, for the other defendants in fact accused them of collusion with the plaintiffs. In view of that circumstance, the trial court should have looked beyond the form, to the substance, of their pleading. In the interest of justice and orderly procedure, the trial court should have treated their answer as a complaint and should have ordered them to disassociate themselves from the other defendants and be joined as additional plaintiffs in the case, for that is the side with which they have aligned themselves.

The Orbetas had an interest in the subject matter of the Crisologos' suit for they were the conduit, through whom the Crisologos effected the donation of their island to the Sent of God Foundation, Inc. They were signatories of

the deed of donation of Puro-Salomague Island. Being instrumental in obtaining the donations from the Crisologos, they are de facto plaintiffs with an actual interest in the enforcement of the conditions of the donation and in the recovery of the donated property on account of the donee's violations of the conditions of the donation.

Being de facto plaintiffs, the Orbetas could file in the Court of Appeals a separate petition for review on certiorari of the trial court's order dismissing their demand for the reversion of the island to the donors.

The finality of the trial court's order dismissing the Crisologos' complaint was not an obstacle to the plaintiffs' and the Orbetas' recourse to the Court of Appeals by a petition for certiorari under Rule 65 of the Rules of Court for such a petition may be filed "within a reasonable time," not within the time to appeal (*Great Pacific Life Assurance Corporation vs. NLRC*, 188 SCRA 139; *Andaya vs. NLRC*, 188 SCRA 253).

Even if appeal should have been the proper remedy against an oppressive and arbitrary order or decision of a lower court, the aggrieved party may avail of the special civil action of certiorari when appeal would not be a speedy and adequate remedy. In this case, appeal would have been neither speedy nor adequate for the plaintiffs and the Orbetas had not been given a chance to prove their causes of action, hence, there was no evidence in the records upon which to anchor a judgment by the Appellate Court in their favor.

"x x x the Appellate Court can legally entertain the special civil action of certiorari in CA-G.R. No. 14821-SP considering the broader and primordial interests of justice which compel an occasional departure from the general rule that the extraordinary writ of certiorari cannot substitute for a lost appeal, the order of March 15, 1979 having become final upon the lapse of the reglementary period of appeal." (*Pachoco vs. Tumangday and Fernando, etc.*, 108 Phil. 239; *Co Chuan Seng vs. CA*, 128 SCRA 308; *Destileria Limtuaco & Co. vs. IAC*, 157 SCRA 706; *Del Pozo, et al. vs. Judge Penaco*, 167 SCRA 577; *Fernando Pelagio, et al. vs. The Hon. Court of Appeals, et al.*, G.R. No. 63188, June 13, 1990; Emphasis supplied.)

"Certiorari is one such remedy. Considered extraordinary, it is made available only when there is no appeal, nor any plain, speedy or adequate remedy in the ordinary course of the law (Rule 65, Rules of Court, Section 1). The long line of decisions denying the petition for certiorari, either before appeal was availed of or specially in instances where the appeal period has lapsed, far outnumbers the instances when certiorari was given due course. The few significant exceptions were: when public welfare and the advance-ment of public policy dictate; or when the broader interests of justice so require, or when the writs issued are null (*Yu Tirona vs. Nanawa*, No. L-22107, September 30, 1967, 21 SCRA 395, 400; *Director of Lands vs. Santamaria*, 44 Phil. 594, 596, cited in 3 Moran, *Comments on the Rules of Court*, 170-172 (1980), or when the questioned order amounts to an oppressive exercise of judicial authority." (*Acain vs. IAC*, 155 SCRA 100; *Sunbeam Convenience Foods Inc., et al. vs. Hon. Court of Appeals, et al.*, 181 SCRA 443; Underscoring supplied.)

IN VIEW OF ALL THE FOREGOING, we GRANT the motion for reconsideration and AFFIRM the decision dated September 28, 1990 of the Court of Appeals in CA-G.R. SP No. 17013. The orders dated January 2, 1989 and February 8, 1989 of herein petitioner, Judge Florencio A. Ruiz, Jr., in Civil Case No. 313-KC are hereby ANNULLED AND SET ASIDE. Said civil case should proceed to trial on the merits with all reasonable dispatch. Costs against the petitioners.

SO ORDERED.

Romero and Campos, Jr., JJ., concur.

Melo, J., joins J. Cruz, (Chairman), in his dissent.

[1] CA 11th Division composed of Justices Bellosillo, as ponente, Marigomen and F. Mendoza, members.

[2] CA 11th Division composed of Justice Bienvenido Ejercito, chairman, Justice Felipe Kalalo, member, and

Justice Luis Victor, as ponente.

[3] CA 11th Division composed of Justice Bellosillo, as ponente and Justices Marigomen and F. Mendoza, members.

[4] Sec. 4, subparagraph 3, Article VIII, 1987 Constitution.

[5] Composed of Justice Isagani A. Cruz as chairman and Justices Carolina C. Griño-Aquino, Florida Ruth P. Romero, Jose A.R. Melo and Jose C. Campos, Jr., as members.

DISSENTING OPINION

CRUZ, J.:

With all due respect, I must dissent from the resolution granting the motion for reconsideration of the decision in the above-named case which I penned with the concurrence of Justice Carolina C. Griño-Aquino and the late Justice Leo D. Medialdea.

The relevant facts are summarized as follows:

The Crisologos filed a complaint against the Sent of God and the Orbetas for revocation of donation. The Sent of God filed an answer resisting the complaint. The Orbetas confessed judgment and filed a cross-claim against the Sent of God. The Sent of God later filed a motion to dismiss the complaint for lack of a cause of action. The motion was granted. The Crisologos moved for reconsideration. The Orbetas joined them because the dismissal included the cross-claim. Their motion was denied. After the order of dismissal had become final and executory, the Crisologos challenged it before the Court of Appeals in a special civil action for certiorari (CA-G.R. Sp. No. 16837). The petition was dismissed on the ground that Rule 65 could not be used as a substitute for a lost appeal. The Crisologos accepted this decision and did not appeal to this Court. Later, the Orbetas filed their own petition, also for certiorari under Rule 65, against the same order of the trial court (CA-G.R. Sp. No. 17013). This time the Court of Appeals, through the same division but with a different membership, granted the petition and ordered the reinstatement of the complaint. The Sent of God then came to this Court.

In the original ponencia, the Court sustained the Sent of God on the following main grounds:

1. The special civil action filed by the Crisologos was the wrong remedy and was used only as a substitute for a lost appeal.
2. The dismissal of the complaint resulted in the dismissal of the cross-claim, which was defensive in nature and could not exist independently of the complaint.
3. The Orbetas cannot have more rights than the Crisologos in attacking the dismissal of the latter's complaint.

In the present resolution, the majority first invokes procedural rules by questioning the validity of the motion to dismiss and by theorizing that the Orbetas should have been considered independent plaintiffs rather than just cross-claimants. It then turns around and rejects procedural rules by maintaining that they should not stand in the way of substantial justice.

It is contended that the motion to dismiss was defective for lack of the three-day notice and that the Sent of God was in estoppel, having already filed its answer.

Assuming these grounds to be valid, I submit they should have been raised within the reglementary period before the Court of Appeals in an ordinary appeal (*Villanueva v. CA*, 205 SCRA 537; *Kabushi Kaisha Isetan v. IAC*, 203 SCRA 583; *Sembrano v. Ramirez*, 166 SCRA 30). This is considered a plain, speedy and adequate remedy under Section 39 of BP 129 and Section 19(a) of the Interim Rules. Instead, the Crisologos filed a special civil action

under Rule 65, which was correctly dismissed as an inappropriate remedy.

There is also the ingenious theory that the Orbetas should have been considered not mere cross-claimants but plaintiffs in their own right who therefore had the capacity to question the dismissal of their complaint against Sent of God.

If we are going to accept this nice technicality, then I think we should also check if the Orbetas paid the prescribed filing fees to justify the docketing of their suit. If they did not (and this is virtually certain as the theory apparently never occurred to them), then their complaint should have been, for that reason alone, dismissed at the outset. Neither would they have been entitled to appeal from the dismissal of the Crisologos' complaint inasmuch as, following the theory, they would not even be cross-claimants therein.

The other thrust of the resolution is that even if the order of dismissal was not seasonably challenged in an ordinary appeal, it could still be assailed under Rule 65 on the ground of substantial justice.

This is an old refrain that is sung whenever the petitioner cannot defend his non-compliance with the prescribed procedure. The majority dissent cites a long list of cases to support the exception to the rule, but given time I can submit a longer list to the contrary (*Tupas v. CA*, 193 SCRA 599; *Bank of America NT & SA v. CA*, 186 SCRA 417; *Dulos v. CA*, 188 SCRA 413; *Edra v. IAC*, 179 SCRA 344, among many others). The point is that if the Crisologos really believed they had a just cause of action, they should have asserted and defended it with all their attention according to the rules. Instead, they soundly slept on their rights and bestirred themselves only when it was too late.

The majority would now salvage the Crisologos' lost appeal by allowing the Orbetas (who have been with them all the way) to file their separate challenge to the dismissal of the Crisologos' complaint. By allowing the Orbetas to do so, we shall in effect enable the Crisologos to indirectly correct their inaction and mistake through the Orbetas, and, worse, by a method not permitted by the rules. The Orbetas are using the same improper remedy employed by the Crisologos.

Procedural rules are not so trivial that they may be applied willy-nilly by the Court. As we said in *Limpot v. Court of Appeals* (170 SCRA 367):

Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive and procedural rights is equally guaranteed by due process whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.

May I humbly suggest that a decision already promulgated, presumably after it was carefully studied by the members of the Court before they signed it, should not be overturned lightly on the basis of a motion for reconsideration that has adduced no new substantial arguments and only reiterated the tired prayer that we disregard procedural rules because this is a special case. In every such motion, the movant always pleads it has a special case, to excuse its non-observance of the Rules of Court.

We have dismissed thousands of petitions for non-compliance with Circulars 1-88, 19-91, and 28-91, which are all procedural rules. I cannot see why the petition of the Orbetas was not dismissed by the Court of Appeals - as it was by us - on the strength of the substantial reasons discussed in our decision.

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