

HEIRS OF NEPOMUCENA PAEZ, PETITIONERS, VS. HONORABLE RAMON AM. TORRES, PRESIDING JUDGE, N BRANCH 6, RTC, CEBU CITY AND HEIRS OF EDILBERTO OSMEÑA, RESPONDENTS.

G.R. No. 104314. February 02, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

Petition for review on certiorari of the Orders of Branch 6 of the Regional Trial Court in Cebu City, dated November 26, 1991 and January 22, 1992, respectively, dismissing the Complaint in Civil Case No. CEB-10159, as against the herein private respondents, a set of defendants below, and denying the latter's motion for reconsideration.

The present controversy involves two (2) parcels of land (Lots 5829 and 5830 of the Cebu Cadastre) in Punta Princesa, Cebu, which were allegedly owned by petitioners' predecessor, NEPOMUCENA PAEZ, but were allegedly included fraudulently in the Petition for Reconstitution of the Transfer Certificates of Title (TCT) of the late Don Sergio Osmeña.

Petitioners, heirs of Nepomucena Paez, lodged a Complaint for Declaration of Nullities of Certificates of Title, Recovery of Ownership and Possession, Reconveyance and Damages, docketed as CEB-10159 below, against the heirs of Don Sergio Osmeña and the persons whose certificates of title were derived from the reconstituted certificates of title of Don Sergio Osmeña over subject parcels of land.

Private respondents are the children-heirs of Edilberto Osmeña (a son of Don Sergio Osmeña), who are a set of defendants in the case below, and who interposed a Motion to Dismiss the Complaint for Failure to State a Cause of Action, which motion was granted by the court a quo.

The facts of the case, as may be gleaned from the complaint of petitioners (plaintiffs below) are as follows:

Nepomucena Paez was the owner of two (2) parcels of land in Punta Princesa, Cebu, evidenced by Original Certificate of Title (OCT) No. 8309 issued in her name on June 24, 1921.

Sometime in 1926, Nepomucena Paez-Cabansay died. Unknown to her other children, her son, Victor Cabansay, who took care of her in Cebu while she was still alive, brought with him the owner's duplicate copy of OCT No. 8309 when he migrated to Mindanao.

In 1947, elders of the Cabansay clan (petitioners' predecessors) were prevented by persons under the employ of Don Sergio Osmeña from harvesting fruits from Lots 5829 and 5830. They (petitioners' predecessors) began their long search for any record or document to prove the ownership of subject lots of their ancestor, Nepomucena Paez-Cabansay, but they failed. Most if not all the pertinent records in the Registry of Deeds were lost or destroyed during the last world war. The owner's duplicate copy of OCT. No. 8309 could not also be found.

In 1987, they found in Manila the owner's duplicate copy of OCT No. 8309 in the possession of Cirilo Cabansay,

who, because of his limited education, kept said document left by his deceased uncle, Victor Cabansay, inside a "caban" without knowing its significance. On May 18, 1990, on the basis of such owner's duplicate copy thereof, OCT No. 8309 covering Lots 5829 and 5830 was duly reconstituted in the name of Nepomucena Paez.[1]

In 1991, the petitioners filed a Complaint, docketed as CEB-10159, against the heirs of Don Sergio Osmeña and the latter's successors-in-interest, since they discovered for the first time in 1989 that TCT No. RT-686 and TCT No. RT-687 covering Lots 5829 and 5830, respectively, were reconstituted in the name of Don Sergio Osmeña.

As alleged in the said Complaint, on March 20, 1947 Esperanza Osmeña, spouse-attorney in fact of Don Sergio Osmeña, filed a petition for the reconstitution of certificates of title of twenty seven (27) parcels of land, fraudulently including Lots 5829 and 5830, as belonging to Don Sergio Osmeña, even prior to the outbreak of the last world war. Relying on the untruthful allegations in the petition that the certificates of title of Don Sergio Osmeña covering said lots were lost or destroyed during the last world war, the trial court of origin, in an Order, dated December 9, 1947, directed the issuance of reconstituted certificates of title of all the twenty seven (27) parcels of land in the name of Don Sergio Osmeña.

Upon the demise of Don Sergio Osmeña, following the Project of Partition, dated December 31, 1963, executed by his heirs, Lots 5829 and 5830 were adjudicated to Victor Osmeña and Edilberto Osmeña (the immediate predecessor of the herein private respondents), respectively.

TCT Nos. RT 686 and RT 687 covering Lots 5829 and 5830 in the name of Don Sergio Osmeña were cancelled and in lieu thereof, TCT Nos. 28967 and 29068 were issued in the names of Victor Osmeña and Edilberto Osmeña, respectively.

Subsequently, Victor Osmeña and Edilberto Osmeña caused the subdivision of said lots. Except for some subdivision lots still unsold, TCT Nos. 28967 and 29068 were cancelled and in lieu thereof, new TCTs (TCT Nos. 39454 to 39691 and 29658 to 29666) covering the subdivision lots were issued to the transferees, the other defendants in the case below.

Thus, the Complaint prayed, among others, for the declaration of nullity of TCT No. RT-686 (for Lot 5829) and TCT No. RT-687 (for Lot 5830) in the name of Don Sergio Osmeña and of the other TCTs derived therefrom, and prayed for the restoration of their possession of subject lots, and for an award of damages and attorneys fees in petitioners and against the private respondents.[2]

On May 29, 1991, instead of sending in an Answer, the herein private respondents (children-heirs of Edilberto Osmeña) presented a Motion to Dismiss, on the grounds that: (1) the complaint states no cause of action as against them; and (2) the cause of action, if any, is barred by the statute of limitations and by laches.[3]

More specifically, private respondents contended that they cannot be faulted for the acts or omissions of their predecessors with respect to the lots in question because they were either minors or still unborn at the time of the commission or omission complained of; and that petitioners cannot claim any title or rights over subject parcels of land by right of subrogation, after having failed to assert such rights of title for almost fifty (50) years.

On November 26, 1991, the trial court of origin issued the Order of dismissal under attack on the ground that the Complaint does not allege a sufficient cause of action, as against the private respondents.

In granting the motion to dismiss, the trial court ratiocinated:

"xxx As to them, the complaint states that notwithstanding the alleged fact that Lot No. 5830 was one of two lots covered by OCT No. 8309 in the name of the predecessor-in-interest of the plaintiffs, the defendants-movants' grandparents, fraudulently filed a petition for the reconstitution of TCT No. 6958 (par.

26 of complaint) which resulted in the issuance of TCT No. RT-687, later on transferred to TCT No. 29068 in the name of Edilberto Osmeña, father of the defendants-movants (pars. 28 and 30 of complaint); that Lot 5830 was subdivided and TCT 29068 was cancelled and in lieu thereof, TCTs Nos. 29658 to 29666 were issued, still in the name of Edilberto Osmeña (par. 35 of complaint); Edilberto Osmeña sold the subdivided lots to different vendees, who are now the other co-defendants and new titles were issued in their respective names.

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The allegations of transfers of ownership of Lot 5830 referred only to Edilberto Osmeña and not to any of the defendants-movants. x x x There are no allegations of any act or omission on the part of any of the defendants-movants violative of the rights of the plaintiffs or constituting a breach of any obligation of any of the defendants-movants to the plaintiffs. Even in the allegations in pars. 40 and 41, none of the defendants-movants were informed of the existence of OCT No. 8309 when this matter was brought to the barangay captain for proceedings under the Barangay Law.

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There being no cause of action as to the defendants-movants, the date of breach of the plaintiff's rights, cannot be determined by the court, hence there is no need to discuss the second ground of the motion to dismiss."[4]

With the denial of their motion for reconsideration of the assailed Order of dismissal, petitioners found their way to this court via the instant petition; theorizing that the respondent court seriously erred in dismissing the complaint, as against the herein private respondents, thereby arbitrarily preventing petitioners from seeking a redress of their grievances insofar as Lot 5830 was concerned.

Petitioners contend that since their complaint states a sufficient cause of action against the deceased Edilberto Osmeña, a legitimate son of the late Don Sergio Osmeña, it follows that there is likewise a sufficient cause of action against the herein private respondents, who are the children and forced heirs of the late Edilberto Osmeña.

To buttress their submission, petitioners invoked germane provisions of the Civil Code on general transmissibility of the rights and obligations of the deceased to his legitimate children and heirs, viz.:

- Article 774 of the Civil Code, by virtue of which private respondents succeeded to subject parcels of land by operation of law, their lack of knowledge of the existence of such properties, notwithstanding;
- Article 1311 of the Civil Code, which provides that hereditary assets are always liable in their totality for the payment of debts of the estate;
- Petitioners further claim that subject parcels of land are registered under the Torrens system. A Torrens title is not subject to prescription.[5]

Private respondents, on the other hand, countered that there are no averments in the complaint showing that they were privies to the subdividing and sale of subject lots to transferees nor are there allegations therein that they received properties from their late father, Edilberto Osmeña. Private respondents further argued that petitioners' cause of action, if any, is barred by prescription and laches.

The petition is impressed with merit.

As held in the case of *Paredes vs. Intermediate Appellate Court*:

"In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint."

‘The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint.’ (Garcon vs. Redemptorist Fathers, 17 SCRA 341)

If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits. xxx"[6]

In the case under consideration, petitioner’s cause of action sued upon is mainly for the declaration of nullity of the reconstituted certificates of title in the name of the late Don Sergio Osmeña covering lots 5829 and 5830 of the Cebu Cadastre, allegedly procured through fraud, and the subsequent certificates of title deriving their existence from the said titles. Such being the scenario below, petitioners should have been heard before the dismissal of their complaint, as against the private respondents, who are the children and forced heirs of the late Edilberto Osmeña, and who stand to succeed or inherit the properties or proceeds from the sale of the properties sought to be recovered by the petitioners.

Questions of fact raised by private respondents, which petitioners dispute, viz.: that they (private respondents) did not inherit a single centavo from their deceased father, Edilberto Osmeña, that the petitioners remained silent or did nothing to assert their rights over subject lots for the past fifty (50) years, barring therefore their claim by reason of laches; and that petitioners’ title, which was reconstituted only in 1990, is based merely on a dubious machine copy of the owner’s duplicate copy, can be ascertained at the hearing on the motion to dismiss the complaint.

Section 2 of Rule 16 of the Rules of Court, the rule in point, provides:

"Sec. 2. Hearing of Motion. - At the hearing of the motion, the parties shall submit their arguments on the questions of law and their evidence on the questions of fact involved except those not available at that time. Should the case go to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same." (underscoring supplied)

The order of dismissal stated that the complaint does not allege a sufficient cause of action against the defendants-movants as there was no allegation of any act or omission on the part of the defendants-movants which violated the rights of the plaintiffs or constituted a breach of any obligations to them. Defendants-movants claimed that they were not privies to the alleged fraudulent procurement of the reconstituted certificates of title in the name of the late Don Sergio Osmeña. However, the complaint precisely impleaded the defendants-movants as the successors-in-interest of Don Sergio Osmeña. Accordingly, the affirmative defense raised by defendants-movants should have been heard before the dismissal of the complaint. Otherwise petitioners would be barred from pursuing their action without being accorded a hearing. Unlike a motion to dismiss based on the failure of the complaint to state a cause of action, which may be resolved solely on the basis of the allegations of the complaint, the motion to dismiss herein raised an affirmative defense that there is no cause of action as against them. The motion thus posed a question of fact that should be resolved after due hearing.

In a similar case where a complaint filed below was dismissed for failure to state a cause of action, this Court held:

"Without hearing the plaintiff would be barred from pursuing her action. The plaintiff should at least have been accorded a hearing. This is the least she is entitled to. And this is true regardless of any strong opinion the court may have as to the truthfulness of the document. No such hearing was held. Without hearing, the plaintiff would be barred from pursuing her action and is to be deprived of what she claims to be her property without being given an opportunity to affirm or deny the validity of Exhibit B.

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However, petitioner should have been heard before dismissal of its complaint especially because there is a stipulation in the Deed of Assignment which it executed in favor of private respondent, that the nine (9) parcels of land subject of the Deed were to be forfeited in favor of private respondent who could sell them to any interested party if the loan of P100,000.00 remained unpaid on 1 October 1983, the very day petitioner allegedly tendered payment by check. Such a precipitate deprivation of ownership should have been considered by the trial court, at the very least, in requiring a hearing on the motion to dismiss, and before actually dismissing the complaint, notwithstanding private respondent's attack on the validity of the tendered check and its character as legal tender."^[7]

WHEREFORE, the petition is GRANTED; the order of Branch 6 of the Regional Trial Court of Cebu, dismissing Civil Case CEB-10159, is SET ASIDE; Civil Case CEB-10159 is REINSTATED and the respondent Regional Trial Court is ordered to conduct a hearing on private respondents' motion to dismiss the Complaint.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 197-198.

[2] Rollo, pp. 112-113.

[3] Rollo, p. 52.

[4] RTC Order, Rollo pp. 78-80.

[5] Sec. 47, P.D. 1529.

[6] 185 SCRA 138-139, 1990.

[7] Excel Agro-Industrial Corporation vs. Gochangco, 166 SCRA 191, pp. 191-192, 194, 1988.

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