

GAUDENCIO GUERRERO, PETITIONER, VS. REGIONAL TRIAL COURT OF ILOCOS NORTE, BR. XVI, JUDGE LUIS B. BELLO, JR., PRESIDING, AND PEDRO G. HERNANDO, RESPONDENTS.

G.R. No. 109068. January 10, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Filed by petitioner as an accion publiciana[1] against private respondent, this case assumed another dimension when it was dismissed by respondent Judge on the ground that the parties being brothers-in-law the complaint should have alleged that earnest efforts were first exerted towards a compromise.

Admittedly, the complaint does not allege that the parties exerted earnest efforts towards a compromise and that the same failed. However, private respondent Pedro G. Hernando apparently overlooked this alleged defect since he did not file any motion to dismiss nor attack the complaint on this ground in his answer. It was only on 7 December 1992, at the pre-trial conference, that the relationship of petitioner Gaudencio Guerrero and respondent Hernando was noted by respondent Judge Luis B. Bello, Jr., they being married to half-sisters hence are brothers-in-law, and on the basis thereof respondent Judge gave petitioner five (5) days "to file his motion and amended complaint" to allege that the parties were very close relatives, their respective wives being sisters, and that the complaint to be maintained should allege that earnest efforts towards a compromise were exerted but failed. Apparently, respondent Judge considered this deficiency a jurisdictional defect.

On 11 December 1992, Guerrero moved to reconsider the 7 December 1992 Order claiming that since brothers by affinity are not members of the same family, he was not required to exert efforts towards a compromise. Guerrero likewise argued that Hernando was precluded from raising this issue since he did not file a motion to dismiss nor assert the same as an affirmative defense in his answer.

On 22 December 1992, respondent Judge denied the motion for reconsideration holding that "[f]ailure to allege that earnest efforts towards a compromise is jurisdictional such that for failure to allege same the court would be deprived of its jurisdiction to take cognizance of the case." He warned that unless the complaint was amended within five (5) days the case would be dismissed.

On 29 January 1993, the 5-day period having expired without Guerrero amending his complaint, respondent Judge dismissed the case, declaring the dismissal however to be without prejudice.

Guerrero appeals by way of this petition for review, the dismissal by the court a quo. He raises these legal issues: (a) whether brothers by affinity are considered members of the same family contemplated in Art. 217, par. (4), and Art. 222 of the New Civil Code, as well as under Sec. 1, par. (j), Rule 16, of the Rules of Court requiring earnest efforts towards a compromise before a suit between them may be instituted and maintained; and, (b) whether the absence of an allegation in the complaint that earnest efforts towards a compromise were exerted, which efforts failed, is a ground for dismissal for lack of jurisdiction.

The Constitution protects the sanctity of the family and endeavors to strengthen it as a basic autonomous social institution.[2] This is also embodied in Art. 149,[3] and given flesh in Art. 151, of the Family Code, which provides:

Art. 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Considering that Art. 151 herein-quoted starts with the negative word "No," the requirement is mandatory[4] that the complaint or petition, which must be verified, should allege that earnest efforts towards a compromise have been made but that the same failed, so that "[i]f it is shown that no such efforts were in fact made, the case must be dismissed."

Further, Art. 151 is complemented by Sec. 1, par. (j), Rule 16, of the Rules of Court which provides as a ground for a motion to dismiss "(t)hat the suit is between members of the same family and no earnest efforts towards a compromise have been made."

The Code Commission, which drafted the precursor provision in the Civil Code, explains the reason for the requirement that earnest efforts at compromise be first exerted before a complaint is given due course -

This rule is introduced because it is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers x x x x A litigation in a family is to be lamented far more than a lawsuit between strangers x x x x[5]

But the instant case presents no occasion for the application of the above-quoted provisions. As early as two decades ago, we already ruled in *Gayon v. Gayon*[6] that the enumeration of "brothers and sisters" as members of the same family does not comprehend "sisters-in-law." In that case, then Chief Justice Concepcion emphasized that "sisters-in-law" (hence, also "brothers-in-law") are not listed under Art. 217 of the New Civil Code as members of the same family. Since Art. 150 of the Family Code repeats essentially the same enumeration of "members of the family," we find no reason to alter existing jurisprudence on the matter. Consequently, the court a quo erred in ruling that petitioner Guerrero, being a brother-in-law of private respondent Hernando, was required to exert earnest efforts towards a compromise before filing the present suit.

In his Comment, Hernando argues that "x x x x although both wives of the parties were not impleaded, it remains a truism that being spouses of the contending parties, and the litigation involves ownership of real property, the spouses' interest and participation in the land in question cannot be denied, making the suit still a suit between half-sisters x x x x"[7]

Finding this argument preposterous, Guerrero counters in his Reply that his "wife has no actual interest and participation in the land subject of the x x x suit, which the petitioner bought, according to his complaint, before he married his wife." [8] This factual controversy however may be best left to the court a quo to resolve when it resumes hearing the case.

As regards the second issue, we need only reiterate our ruling in *O'Laco v. Co Cho Chit*, [9] citing *Mendoza v. Court of Appeals*, [10] that the attempt to compromise as well as the inability to succeed is a condition precedent to the filing of a suit between members of the same family, the absence of such allegation in the complaint being assailable at any stage of the proceeding, even on appeal, for lack of cause of action.

It is not therefore correct, as petitioner contends, that private respondent may be deemed to have waived the aforesaid defect in failing to move to dismiss or raise the same in the Answer. On the other hand, we cannot sustain the proposition of private respondent that the case was, after all, also dismissed pursuant to Sec. 3, Rule 17, of the Rules of Court[11] for failure of petitioner to comply with the court's order to amend his complaint.

A review of the assailed orders does not show any such directive which Guerrero supposedly defied. The Order of 7 December 1992 merely gave Guerrero five (5) days to file his motion and amended complaint with a reminder that the complaint failed to allege that earnest efforts were exerted towards a compromise. The Order of 22 December 1992, which denied Guerrero's motion for reconsideration, simply stated that "Plaintiff if it (sic) so desire must amend the complaint otherwise, the court will have to dismiss the case (underscoring supplied) x x x" The Order of 29 January 1993 dismissing the case without prejudice only made reference to an earlier order "admonishing" counsel for Guerrero to amend the complaint, and an "admonition" is not synonymous with "order." Moreover, since the assailed orders do not find support in our jurisprudence but, on the other hand, are based on an erroneous interpretation and application of the law, petitioner could not be bound to comply with them.[12]

WHEREFORE, the petition is GRANTED and the appealed Orders of 7 December 1992, 22 December 1992 and 29 January 1993 are SET ASIDE. The Regional Trial Court of Laoag City, Branch 16, or whichever branch of the court the case may now be assigned, is directed to continue with Civil Case No. 10084-16 with deliberate dispatch.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

[1] Docketed as Civil Case No. 10084-16 of the Regional Trial Court, Br. XVI, Laoag City, the complaint seeking to recover from private respondent Lot No. 15731 of the Sarrat Cadastre, Ilocos Norte, with damages.

[2] First sentence of Sec. 12, Art. II, Constitution.

[3] The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.

[4] *Fule v. Court of Appeals*, G.R. No. 79094, 22 June 1988, where it was held: By its very language, the Rule is mandatory. Under the rule of statutory construction, negative words and phrases are to be regarded as mandatory while those in the affirmative are merely directory (*McGee v. Republic*, 94 Phil. 820 [1954]). The use of the term "shall" further emphasizes its mandatory character and means that it is imperative, operating to impose a duty which may be enforced (*Bersabal v. Salvador*, No. L--35910, 21 July 1978, 84 SCRA 176).

[5] Report of the Code Commission, cited in Vicente J. Francisco, *The Revised Rules of Court in the Philippines* (1973), Vol. I, p. 959.

[6] No. L-28394, 26 November 1970, 36 SCRA 104, 108.

[7] Comment, p. 2; Rollo, p. 50.

[8] Reply, pp. 3-4, Rollo, pp. 58-59. Guerrero apparently refers to the Complaint, p. 1, par. 4, Rollo, p. 20. In this connection, he implies that he married his wife during the effectivity of the New Civil Code hence the presumption under Art. 119 thereof that their property relation is one of conjugal partnership of gains. Art. 148 of

the same Code provides that property brought to the marriage as his or her own shall be his or her own exclusive property.

[9] G.R. No. 58010, 31 March 1993.

[10] No. L-23102, 24 April 1967, 19 SCRA 756, 759. In that case, this Court through Justice J.B.L. Reyes held: x x x Since the law forbids a suit being initiated (filed) or maintained unless such efforts at compromise appear, the showing that efforts in question were made is a condition precedent to the existence of the cause of action. It follows that the failure of the complaint to plead that plaintiff previously tried in earnest to reach a settlement out of court renders it assailable for lack of cause of action and it may be so attacked at any stage of the case even on appeal.

[11] If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

[12] Gojo v. Goyala, G.R. No. L-26768, 30 October 1970.

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