

LA TONDEÑA DISTILLERS, INC., PETITIONER, VS. THE HON. JUDGE BERNARDO T. PONFERRADA, JOAQUIN T. GOCHANGCO, ENRIQUE DY, QUINTIN DY, LITO ONG, JERRY ONG AND LUIS T. ONG, RESPONDENTS.

G.R. No. 109656. November 21, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

The undisputed facts are simplified as follows:

1. Several persons[1] (herein referred to as defendants) reneged on their contract to sell to private respondents a parcel of land[2] located in Bago City;
2. This breach prompted private respondents to file on August 25, 1987 before the Regional Trial Court (RTC) of Bacolod City an action for "specific performance with damages" against defendants. A notice of lis pendens was annotated on the latter's title although the same was cancelled on November 9, 1988 upon defendants filing a bond;
3. Pending the trial before the lower court on November, 1991, petitioner bought the above lot from defendants. Aggrieved, private respondents amended their complaint and impleaded petitioner as an additional defendant alleging that petitioner was not a buyer in good faith;
4. Subsequently, petitioner filed a motion to dismiss the amended complaint on two grounds: no cause of action and improper venue. In support of the first ground, petitioner asserts that it is a buyer in good faith since the notice of lis pendens was already cancelled when it bought the lot. As for the second ground, petitioner argued that venue should be in Bago City where the lot is located and not in Bacolod City;
5. On October 1, 1992, petitioner received a resolution from the lower court denying their motion as there was need for the parties to present evidence on the question of good faith. Petitioner's motion for reconsideration was also denied in a resolution they received on January 20, 1993;
6. More than three (3) months later, or on April 21, 1993, petitioner went directly to this Court via petition for certiorari under Rule 65 assailing the denial of its motions. On November 24, 1993, the court gave due course to the petition and required the parties to submit their memorandum.[3] After the parties submitted their respective memoranda as directed, petitioner filed a "manifestation" alleging for the first time that it sold the lot sometime in September, 1992 to Distileria Bago, Inc. a separate entity with which the former has substantial stockholdings. Based on such admission, private respondents moved to dismiss the instant petition, arguing that petitioner is no longer a real party in interest, having sold the lot.

The issue posed herein involves the remedy of an aggrieved party when the lower court denies his motion to dismiss.

However, the petition should be dismissed outright for being filed beyond the reasonable period,[4] the same having been filed only after more than three months from the time petitioner received a copy of the assailed RTC resolutions.

Even assuming that the petition was promptly filed, dismissal is still warranted on account of the following reasons:

First, an order denying a motion to dismiss is only interlocutory which is neither appealable until final judgment,[5] nor could it generally be assailed on certiorari.[6] The remedy of the aggrieved party is to file an answer pursuant to Sec. 4, Rule 16, and interpose as defenses, the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, elevate the whole case by appeal in due time.[7]

Second, the extraordinary remedy of certiorari can be availed of only if the denial of the motion constitutes grave abuse of discretion.[8] In the case at bar, the lower court did not abuse its discretion in deferring[9] action on the motion. Section 3 of Rule 16[10] sanctions deferment of hearing on the motion "until the trial if the ground alleged does not appear to be indubitable." Clearly respondent judge had doubts on the allegation of petitioner's good faith. This is a question of fact which necessitates presentation of evidence and is certainly far from indubitable.[11] It is within the discretion of the court to defer action if the ground alleged does not appear to be indubitable[12] and that deferment is only deemed a provisional denial of the motion to dismiss.[13]

Finally, We are not also persuaded by petitioner's argument that venue should be lodged in Bago City where the lot is situated.[14] The complaint is one for "specific performance with damages." Private respondents do not claim ownership of the lot but in fact recognized title of defendants by annotating a notice of lis pendens. In one case,[15] a similar complaint for "specific performance with damages" involving real property, was held to be a personal action, which may be filed in the proper court where the party resides. Not being an action involving title to or ownership of real property, venue, in this case, was not improperly laid before the RTC of Bacolod City.

Counsel for the petitioner should have meticulously observed the procedural guidelines established by the Rules of Court as well as by jurisprudence. We reiterate that the extraordinary remedy of certiorari is not intended to be a tool to delay litigation and must be resorted to only in cases of manifest grave abuse of discretion. The case at bench does not call for such extraordinary remedy.

ACCORDINGLY, finding no grave abuse of discretion, the instant petition is DISMISSED.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Cotabato Visayan Development Corporation, Amanda G. Vda. de Malojo and Ephraim Olvido.

[2] Covered by TCT No. T-10921.

[3] Rollo, p. 71.

[4] Three months is the reasonable period for filing a petition for certiorari under Rule 65 as adopted in *Cielo v. NLRC*, 193 SCRA 410 (1993).

[5] *Newsweek vs. IAC*, 142 SCRA 177 (1986) citing Section 2 of Rule 41; *Van Dorn vs. Romillo, Jr.*, 139 SCRA 139 (1985).

[6] *Mendoza vs. CA*, 201 SCRA 343; *MB Finance Corporation vs. Abesamis*, 195 SCRA 592 (1991);

Quisumbing vs. Gumban, 193 SCRA 520 (1991).

[7] Dizon vs. CA, 210 SCRA 107 (1992); NIDC vs. Aquino, 163 SCRA 153 (1988).

[8] Mendoza vs. CA, supra; Cojuangco vs. Romillo, Jr., 167 SCRA 751 (1988); Acain vs. IAC, 155 SCRA 100; Vda. de Bacang vs. CA, 125 SCRA 137 (1983); Espiritu vs. Solidum, 52 SCRA 131 (1973); Moreno vs. Macadaeg, 117 Phil. 713 (1963).

[9] RTC Resolution dated Sept. 22, 1992, p. 3; Rollo, p. 28.

[10] Sec. 3. Hearing and Order. - After hearing the court may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable. (*italics ours*)

[11] Mendoza vs. Navarette, 214 SCRA 337 (1992); Espiritu vs. Solidum, supra; Geganto vs. Katalbas, 8 SCRA 525 (1963); Uy Chao vs. dela Rama Steamship, 6 SCRA 69 (1962).

[12] Mendoza vs. CA, supra, citing Nico vs. Blanco, 81 P 213; Ong Peng v. Custodio, 111 P 382 (1961) cited in Vicente J. Francisco. The Revised Rules of Court of the Phil., Annotated and Commented, Vol. I, 2nd ed. p. 966. See Recreation and Amusement Association of the Phil. vs. City of Manila, 100 P 950 (1957).

[13] Summit Guaranty vs. Arnaldo, 158 SCRA 332 (1988) citing Peralta de Guerrero vs. Madrigal Shipping, 106 P485 (1960).

[14] Rule 4, Sec. 2. Venue in Courts of First Instance. - (a) Real actions. - Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.

(b) Personal actions. - All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

Sec. 2 of the Revised Rules on Venue of actions provides:

Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a nonresident defendant where he may be found, at the election of the plaintiff.

[15] Adamos vs. J.M. Tuason, 25 SCRA 530 (1968).

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