

**HEIRS OF MARCELINO PAGOBO, NAMELY: PELAGIO PAGOBO,
GONZALO PAGOBO, ANIANA PAGOBO, ALFREDO SALVADOR,
SAMUEL PAGOBO, REMEDIOS PAGOBO, VALENTINA PAGOBO,
JONATHAN PAGOBO, VIRGILIO ...**

G.R. No. 121687. October 16, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court to set aside the decision[1] of 28 April 1995 of public respondent Court of Appeals in C.A.-G.R. SP No. 35389, affirming the 24 March 1994 order[2] of the Regional Trial Court of Lapu-Lapu City, Branch 54, in Civil Case No. 2349-L, denying petitioners' motion to admit their Amended Complaint.

The factual and procedural antecedents are summarized by the Court of Appeals as follows:

It appears that on October 12, 1990, plaintiffs Alfonso Pa[g]obo, et al. filed a complaint for “Declaration of Nullity of Documents, Reconveyances [sic] With Right of Legal Redemption, Damages & Attorney’s Fees” docketed as Civil Case No. 2349-L against defendants Gabriel Bañez, et al. before the respondent Regional Trial Court.

On December 7, 1990, defendant[s] filed their answer thereto.

On February 21, 1994, plaintiffs filed a motion to admit amended complaint. The amended complaint attached to the motion was for “Partition, Declaration of Nullity of Documents, Cancellation of Transfer Certificate of Titles, [sic] Reconveyance With Right of Legal Redemption, Damages and Attorney’s Fees, and Other Reliefs”.

On February 28, 1994, defendants filed an opposition to the admission of the amended complaint.

On March 29, 1994, plaintiffs filed a rejoinder thereto.

On March 24, 1994, the respondent court issued the assailed Order denying the motion to admit amended complaint.

On March 25, 1994, plaintiffs filed an urgent motion for reconsideration to which an opposition thereto was filed on April 13, 1994. A rejoinder thereto was filed by the plaintiffs on April 28, 1994. On May 11, 1994, defendants filed comment/reply to rejoinder to the opposition.

On May 20, 1994, the respondent court issued an Order denying the motion for reconsideration.

On June 10, 1994, plaintiffs filed an omnibus motion praying that the Orders of March 24, 1994 and May 20, 1994 be reconsidered and that the Motion to Admit the Amended Complaint dated February 21, 1993 be granted.

On June 23, 1994, the respondent court issued an Order denying the omnibus motion.

Hence, this petition.

Petitioner maintains that the respondent Regional Trial Court committed grave abuse of discretion tantamount to lack or excess of jurisdiction in denying their motions to admit amended complaint and the omnibus motion it appearing that:

- (a) there is no intention to reimplead the defendants already ordered dropped as shown by the fact that their names had not been underscored, hence, it is but a clerical error;
- (b) pre-trial is yet to be conducted;
- (c) the three (3) day notice rule was observed in filing the motion;
- (d) the salient points namely: (1) the impleading of the Register of Deeds; (2) the void sale to Edward Short who is a foreigner; the prohibition to alienate a homestead lot; and that they were in continuous, peaceful, open, and adverse possession of the lots in the concept of owners prior to the entry of defendants do not change the cause of action nor theory of the case. Rather, it [sic] merely amplify, enlarge and fortify the cause of action originally alleged; and
- (e) that the amendments clearly conforms [sic] with Section 3, Rule 10 of the Revised Rules of Court.

Private respondents, however, submit that the instant petition be dismissed for the following reasons, to wit:

- (1) Petitioners deliberately failed to state in their certification of non-forum shopping the fact that there existed a terminated civil case No. 124-L involving the same parties and/or their predecessors or successors-in-interest and involving the same lot in litigation;
- (2) The respondent trial court did not commit grave abuse of discretion when it denied petitioners' motion to admit amended complaint, their motion for reconsideration, and their omnibus motion:
 - (a) the trial court correctly denied admission of the amended complaint because the admission thereof will prejudice the rights of defendants;
 - (b) there is no necessity to implead the Register of Deeds in Civil Case No. 2349-L;
 - (c) the amended complaint violates Section 3, Rule 10 of the Revised Rules of Court;
 - (d) the amendments sought to be admitted would further delay the early resolution of the case at bars [sic].[3]

The challenged order of 24 March 1994 of the trial court reads as follows:

The MOTION TO ADMIT AMENDED COMPLAINT filed by plaintiffs is hereby denied.

A perusal of the records would show that as early as September 15, 1993, this court ordered the dismissal of this case as against defendants Damasa and Candido both surnamed Pagobo, Olimpia Tampus, Salud Maloloy-on and Adriana Mahusay, yet these very same defendants were again named in plaintiff's amended complaint attached to its Motion to Admit Amended Complaint.

In view thereof, and for the reasons adduced by counsel for defendant spouses in its opposition, the Motion to Admit Amended Complaint is hereby denied.[4]

The opposition of defendants-spouses Gabriel and Aida Bañez[5] to the motion to admit the Amended Complaint, which the trial court took into account, was anchored on the following grounds: (1) the 3-day notice rule for motions was not observed as they received a copy of the motion in question only on 21 February 1994, the date of said motion; (2) the Amended Complaint violated Section 3 of Rule 10 of the Rules of Court by substantially

altering the original cause of action; besides it was filed late viz., three years after the filing of the original complaint; and (3) the motion to amend was dilatory.

The Court of Appeals ruled that the trial court was correct in not admitting the amended complaint and held, to wit:

To determine whether a different cause of action is introduced by amendments to the complaint, what is ascertained is whether the defendant is being required to answer for a liability or legal obligation completely different from that stated in the original complaint. A closer scrutiny of the original complaint shows that the original action was for “declaration of nullity of documents, reconveyance with right of legal redemption, damages and attorney’s fees” while the amended complaint is for “partition, declaration of nullity of documents, cancellation of transfer certificate of titles [sic], reconveyance with right of legal redemption, damages and attorney’s fee[s], and other reliefs.” Further, it was alleged in the amended complaint that petitioners are the absolute and legal owners of the land in question and that:

All of the defendants entered into transactions of the lands subject matter of this case, without the knowledge of plaintiffs and their predecessors-in-interest, and defendant[s] did so despite full knowledge that ownership of said lands belonged to the plaintiffs and their predecessor[s]-in-interest; and also despite full knowledge that Edward Short, being a foreigner, had no legal capacity to buy or own said lots; and despite full knowledge that plaintiffs and their predecessors-in-interest had been in continuous, peaceful, open, and adverse possession of said lot in concept of the owner prior to the entry by defendants into the premises.

Moreover, petitioners, in the amended complaint, also prayed that they be declared absolute and legal owners of the subject lots, that it be partitioned among them in accordance with the law on hereditary succession, and that the transfer certificates of title in the name[s] of the private respondents be cancelled and a new title be issued in their names.

A scrutiny of abovementioned amendment shows that there are additional causes of action which necessitates the private respondents to file an amended answer in order to controvert the new allegations contained in the amended complaint. Incidentally, it appears that petitioners took sometime before filing the amended complaint albeit, courts are liberal in allowing a plaintiff to amend complaint so long as there is no departure from the original cause of action. We find, however, that the amendments in the case at bar introduced new issues and materially altered the grounds of relief, thus, the respondent court did not err in denying the motion to admit amended complaint. The granting of leave to file amended pleadings is a matter [particularly] within the sound discretion of the trial court. This discretion will not be disturbed on appeal, except in case of an evident abuse thereof. Such abuse does not appear in the case at bench.[6]

Petitioners submit to us that their Amended Complaint did not substantially depart from their cause of action set forth in the original complaint and proffered four “special and important reasons” for the allowance of their petition, viz.:

FIRST. [They] will be precluded from impleading the Register of Deeds for Lapu-Lapu City who is an indispensable party because the trial court cannot order the said Register of Deeds to cancel the void Transfer Certificate of Titles [sic] and issue new Transfer Certificate of Titles [sic] unless said Register of Deeds is impleaded.

SECOND. [They] would be forever barred from invoking their right of redemption as co-owner under Article 1620 in relation to Article 1623 of the New Civil Code and as heirs of the homestead patentee under Commonwealth Act No. 141, as amended.

THIRD. [They] would be forced to breach the principle against multiplicity of suits by filing a separate suit for partition against other appellees who are co-heirs of appellants in the event that the land is ultimately awarded

in favor of plaintiffs and against appellees-Spouses Gabriel Bañez and Aida Bañez.

FOURTH. The controversies between the parties will never be fully presented before the trial court and their rights will not be completely determined, and that the case will not be fully tried on the merits.

In his Comment on the petition, private respondent Gabriel Bañez points out that the mode of review interposed by petitioners is erroneous, as redress should have been sought under Rule 65 since the challenged decision of the Court of Appeals was on a petition for certiorari under said Rule. He further maintains that the denial of the admission of the Amended Complaint was proper since the latter substantially altered petitioners' original cause of action and was clearly dilatory.

In their Reply, petitioners assert that the remedy they availed of is sanctioned by jurisprudence, citing several cases wherein "to avoid delay and to thwart the commission of injustice, a special civil action filed with the Appellate Court was liberally considered as an appeal, or vice-versa." [7]

Private respondent filed a Motion to Expunge Appellants' Reply to Comment since no leave of court was secured before said reply was filed.

In a Resolution dated 8 July 1996, we noted private respondent Bañez' Motion to Expunge the Reply, gave due course to the petition and required the petitioners and private respondent Gabriel Bañez to file their respective memoranda, which they subsequently did. Parenthetically, as the other private respondents did not file their comments or memoranda, they are deemed to have waived the filing thereof.

As earlier adverted to, the trial court's principal reasons for refusing to admit the Amended Complaint were the inclusion of the names of some of the defendants against whom the case was already ordered dismissed and the grounds relied upon by defendants Gabriel and Aida Bañez in their opposition. However, the Court of Appeals considered only one ground, i.e., the Amended Complaint substantially changed or altered the cause of action in the original complaint. The ultimate issue then in this petition for review is whether the trial court committed grave abuse of discretion in denying the motion to admit the Amended Complaint on the ground that the Amended Complaint substantially changed or altered the cause of action in the original complaint. Upon this issue the parties have focused their arguments.

Section 3 of Rule 10 of the Rules of Court is the law on the matter. Prior to the 1997 amendments, the section read as follows:

Sec. 3. Amendments by leave of court. -- After the case is set for hearing, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

As amended, it now reads:

Sec. 3. Amendments by leave of court. – Except as provided in the next preceding section, substantial amendments may be made only by leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard. (3a)

Since this case was decided by the Court of Appeals under the old law, we resolve it in that light. Thereunder, while substantial amendments were allowed even after the case had been set for hearing, such could only be done upon leave of court. That leave could be refused if the court found that: (a) the motion was made with intent to delay the action; or (b) the cause of action or defense was substantially altered. The first ground is no longer an

issue in this case. Even if it were, it had to be resolved in the negative since there is at all no showing that the amendment was intended to delay the action. The trial court had not even set Civil Case No. 2349-L for hearing.

We cannot also agree with both the trial court and respondent Court of Appeals that petitioners' Amended Complaint substantially changed or altered their original cause of action. A cause of action is an act or omission of one party in violation of the legal rights of the other.[8] It is the reason why the litigation has come about.[9] Its essential elements are a legal right of the plaintiff, a correlative obligation on the part of the defendant to respect the right and an act or omission of the defendant violative of such right.[10]

A perusal of petitioners' original complaint[11] shows that essentially, petitioners' cause of action is founded on the fact that as grandchildren and great-grandchildren of the late Juan Pagobo, who was the registered owner of Lot No. 6727 of the Opon Cadastre, they are entitled to a share therein by virtue of hereditary succession; that after it was subdivided into thirty-four (34) lots, one Juana Pagobo sold subplot No. 6727-0 on 5 May 1964 to Edward Short, Jr., and thereafter, Short sold Lots Nos. 6727-0-1, 6727-0-2 and 6727-CC to defendants Gabriel and Aida Bañez to whom certificates of title were issued.[12] Petitioners alleged that the sale was void because the mother lot, Lot 6727, has not yet been extrajudicially settled by and among the heirs of Juan Pagobo. They then prayed that the deeds of sale executed by Juana Pagobo and Edward Short be declared null and void; that defendants Gabriel and Aida Bañez be ordered to reconvey to petitioners the lots sold to them; and that petitioners be allowed to exercise their right of redemption under Article 1620 in relation to Article 1623 of the Civil Code in respect of said lots.

In their Amended Complaint, petitioners impleaded the Register of Deeds; specifically alleged that Lots Nos. 6727-0-1, 6727-0-2 and 6727-CC, being parts of Lot No. 6727 owned by Juan Pagobo, belonged to them as heirs of the latter; that demands for partition had been made; that the sales made by Juana Pagobo were void not only because of defendants' full knowledge that petitioners owned the lots in question, but also because Edward Short, being a foreigner, was disqualified from acquiring the lots; further, that since the lots were covered by homestead patents, they could not be alienated for 25 years; and that petitioners had been in continuous, peaceful, open and adverse possession thereof. Plainly, these allegations do not constitute substantial amendments. If anything, they merely strengthen petitioners' original cause of action by providing a more detailed account thereof, which then puts in clearer perspective the second element of a cause of action. Under Section 2 of Rule 8, a party may even set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses.

Anent the claim for partition, we hold the same to be incidental to the allegation in the original complaint that the property had not been extrajudicially settled and was thus intended to obtain complete relief in one action. We likewise find that allowance of the Amended Complaint would cause no prejudice to private respondents since their defenses of lack of cause of action, prescription, laches and res judicata[13] would neither be diminished nor impaired.

Hence, the trial court should have granted the motion to admit the Amended Complaint on the principle that amendments of pleadings are favored and should be liberally allowed in the furtherance of justice in order to determine every case as far as possible on its merits without regard to technicalities, to speed up trial and save party litigants from incurring unnecessary expense, so that a full hearing on the merits of every case may be had and multiplicity of suits avoided.[14] It must be pointed out that the new Section 3 of Rule 10 of the Rules of Court relaxes further the rule on amendment of pleadings. Refusal to allow amendments other than those which may be made as a matter of right under Section 2,[15] may be based only on the ground that the motion was made with intent to delay. The other ground, viz., the amendment substantially alters the original cause of action or defense, has been dropped from the Rule. This simply means then that amendments may substantially alter the

cause of action or defense.[16]

In closing, we address the argument of private respondent Bañez that as what the petitioners filed with respondent Court of Appeals was a special civil action for certiorari under Rule 65 of the Rules of Court, then redress from an adverse decision therein should likewise have been sought under said Rule. We disagree. Rule 45 of the Rules of Court is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal,[17] including that under Rule 45.[18]

WHEREFORE, the petition is hereby GRANTED. The decision of 28 April 1995 of the Court of Appeals in CA-G.R. SP No. 35389 and the Order of the Regional Trial Court of Lapulapu, Branch 54, of 24 March 1994 in Civil Case No. 2349-L are SET ASIDE and said Regional Trial Court of Cebu is directed to admit petitioners' Amended Complaint.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Original Record (OR), CA-G.R. SP No. 35389, 184-189; Rollo, 24-29; Per Associate Justice Justo P. Torres, Jr. (now Associate Justice of the Supreme Court), with Associate Justices Ruben T. Reyes and Celia Lipana-Reyes, concurring.

[2] OR, 82.

[3] Or, 85-187.

[4] Id., 82.

[5] OR, 66-78.

[6] Rollo, 28-29.

[7] Citing Pampanga Sugar Development Co., Inc. v. Quiroz, 16 SCRA 784 [1966]; Mutuc v. Comelec, 22 SCRA 662 [1968]; People v. Doriguez, 24 SCRA 163 [1968]; Sotto v. Mijares, 28 SCRA 163 [1969]; Cruz v. Navarro, 54 SCRA 109 [1973].

[8] Development Bank of the Philippines v. Pundogar, 218 SCRA 118, 143 [1993]; Development Bank of Rizal v. Sima Wei, 219 SCRA 736, 739 [1993]

[9] Navoa v. Court of Appeals, 251 SCRA 545, 552 [1995]

[10] Virata v. Sandiganbayan, 202 SCRA 680, 694 [1991]; Madrona v. Rosal, 204 SCRA 1, 6 [1991].

[11] OR, CA-G.R. SP No. 35589, 18-25.

[12] It may be presumed that Sublot No. 6727-0 was further subdivided. There is, however, no sufficient allegation as to how Short acquired Sublot No. 6727-CC.

[13] OR, 39-40.

[14] Sedeco v. Court of Appeals, 115 SCRA 96, 103 [1982]; Calabig v. Villanueva, 135 SCRA 300, 307 [1985]; Cabutin v. Amacio, 170 SCRA 750, 756 [1989]; Eugenio v. Velez, 185 SCRA 425, 435 [1990]

[15] SEC. 2. Amendments as a matter of right. – A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.

[16] See Jose Y. Feria, 1997 Rules of Civil Procedure as Amended (RULES 1-71, RULES OF COURT), New Provisions 36-37 (1997).

[17] Sy v. Romero, 214 SCRA 187, 193 [1992].

[18] Escudero v. Dulay, 158 SCRA 69, 77 [1988]; Vda. De Espina v. Abaya, 196 SCRA 312, 321 [1991].

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