

NATIONAL STEEL CORPORATION, PETITIONER, VS. COURT OF APPEALS, HON. ARSENIO J. MAGPALE, AND JOSE MA. P. JACINTO, RESPONDENTS.

G.R. No. 123215. February 02, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision,[1] dated September 11, 1995, of the Court of Appeals, which dismissed the special civil action for certiorari filed by petitioner National Steel Corporation (NSC) to set aside the order, dated April 6, 1994, of the Regional Trial Court, Branch LVII, City of Makati. In the said order, the trial court denied the motion of petitioner NSC to dismiss the complaint for recovery of personal property which private respondent Jose P. Jacinto had filed.

The facts are as follows:

Private respondent Jacinto was the former owner of record of 100 shares of stock of the Manila Golf and Country Club (MGCC) now owned by and registered in the name of petitioner NSC. On February 9, 1990, he filed a complaint[2] against the NSC, alleging that--

4.

In or about 1970, for valuable considerations, Manila Golf and Country Club, Inc. (MGCCI) issued its Stock Certificate No. 1361 to plaintiff representing 100 shares of MGCCI.

5.

From about 1972 up to the early part of February 1986, plaintiff was abroad and could not return to the Philippines for reasons beyond his control.

6.

When plaintiff returned to the Philippines in 1986, he discovered that Stock Certificate No. 1361 had been cancelled and a replacement Stock Certificate had been issued in the name of NSC.

7.

The cancellation and transfer of plaintiff's Stock Certificate No. 1361 is void for the reasons that: there was no meeting of minds, there was no specific contract between plaintiff and NSC or any party covering the alleged transfer nor was there any consideration for the same.

8.

Despite repeated demands upon NSC to return and re-transfer plaintiff's 100 shares in MGCCI formerly covered by said Stock Certificate No. 1361, NSC failed and refused and still fails and refuses to comply with the same.

9.

MGCCI's act in cancelling plaintiff's stock certificate No. 1361 and issuing a replacement certificate in the name of NSC is without basis and illegal considering that there was no valid document evidencing the assignment, sale or transfer by plaintiff to NSC of MGCCI stock certificate No. 1361.

10.

In consequence of NSC and MGCCI's illegal act in causing the cancellation and transfer of plaintiff's Stock Certificate No. 1361 unto NSC's name:

10.1.

Plaintiff suffered mental anguish for which an award of moral damages of P1 Million is proper;

10.2.

Plaintiff was constrained to litigate and secure the services of counsel for a fee of P100,000.00 and for which NSC and MGCCI should be held liable.

Based on the foregoing allegations, Jacinto prayed:

P R A Y E R

WHEREFORE, it is respectfully prayed that judgment be rendered:

1.

Ordering NSC to execute a deed of assignment re-transferring unto plaintiff the MGCCI certificate issued to the former in replacement of Stock Certificate No. 1361 and to surrender said Deed of Assignment, together with the MGCCI certificate issued to NSC (in replacement of Stock Certificate No. 1361) for cancellation thereof and to order MGCCI to cancel said stock certificate and issue a new one in the name of Jose Ma. P. Jacinto;

2.

If for any reason whatsoever NSC fails or refuses to execute the deed of assignment and surrender NSC's replacement stock certificate, MGCCI be ordered to:

2.1.

Cancel in its stock and transfer book the stock certificate issued to NSC issued in replacement of certificate No. 1361;

2.2.

Issue a new stock certificate in the name of NSC or the stock certificate that might have been issued in replacement thereof.

2.3. Declare as lost and of no force and effect the MGCCI stock certificate now outstanding and registered in the name of NSC.

3. Ordering NSC and MGCCI to pay plaintiff, jointly and severally:

3.1. P1 Million as moral damages; and

3.2. P100,000.00 as attorney's fees.

Other reliefs are also prayed for.[3]

Petitioner NSC sought the dismissal of the complaint on the ground of prescription, but its motion was denied by the trial court in an order, dated November 9, 1990. Petitioner NSC brought a special civil action for certiorari in the Court of Appeals, but again its petition was dismissed by the appellate court on August 30, 1991. Its attempt to secure review in this Court failed as its petition was dismissed in a resolution, dated March 18, 1992.

Petitioner NSC then filed its answer, after which trial was held. It thereafter filed a motion[4] to dismiss the complaint against it on the ground of lack of jurisdiction. It alleged:

Plaintiff paid docket and other fees totalling P4,040.00. The certification of Clerk of Court Ma. Corazon Cecelia P. Cuba is attached as Annex A.

2.

Under Sec. 7(a) of Rule 141, as amended by the Resolution of the Supreme Court En Banc dated September 4, 1990, the docket fees "for filing an action . . . is P600 for the first P150,000.00 and P5.00 for each P1,000.00 in excess of P150,000.00."

3.

The actual value of the MGCCI share certificate as of February, 1990, when the complaint was filed, was P5,511,000.00.

A certification issued by the MGCCI attesting to the fair market value of a MGCCI share is attached as Annex B.

4.

This means that the correct docket fee for the filing of plaintiff's complaint is approximately P26,805.00 and not P4,040.00 which is the amount plaintiff actually paid.

....

6.

The failure of plaintiff to pay the correct filing fees on February 13, 1990 meant that this court did not acquire jurisdiction over plaintiff's action. Under the ruling of *Sun Insurance*, and as explained below, the plaintiff cannot now pay the deficiency in the filing fees because it is already "beyond the applicable prescriptive or reglementary period."

The trial court denied petitioner's motion in an order, dated April 6, 1994. Hence, the latter brought a special civil action for certiorari in the Court of Appeals, but its petition was dismissed on September 11, 1995. The Court of Appeals ruled:

The principal relief, or prayer in private respondent's complaint is specific, for the "NSC to execute a deed of assignment re-transferring unto plaintiff the MGCCI certificate x x x in replacement of stock certificate No. 1861 x x x".

There is no allegation in the complaint of any quantified amount and/or of the actual value of the stock certificate in question.

There is also no separate cause of action and/or prayer in the face of the complaint that private respondent, even in the alternative, prayed that if the principal relief is unavailing, that defendants be ordered to pay him the actual or equivalent value of the stock certificate, hence there is even no reason or basis to move for a more definite statement or for a bill of particulars of any matter which is not averred in the complaint with sufficient definiteness or particularity to enable petitioner to properly prepare for a more responsive pleading or to prepare for trial.

....

Perspicaciously, what should guide the office of the Clerk of Court, Regional Trial Court, Makati, Metro Manila, in assessing the correct docket fees for the filing of the complaint in Civil Case No. 90-4051, when it was filed on February 13, 1990, is what is alleged and prayed for in the complaint. It would be uncalled for and baseless for the clerk of court to consider at that point in time the supposed "actual value of the MGCCI share certificate as of February, 1990, x x x (in the amount of) P5,511,000.00", and then and there assess an additional docket fee of P22,765.00 (P26,805.00 minus P4,040.00), precisely because the said sum of "P5,511,000.00" is not alleged in the body of the complaint, and which is not also sought to be recovered in the action.

There can be no divergence of opinion from the allegations, designation and the reliefs prayed for, as clearly and definitively spelled out in the face of the complaint, that private respondent's principal relief is for petitioner NSC "to execute a deed of assignment re-transferring unto plaintiff the MGCCI certificate issued to the former in replacement of stock certificate No. 1861 x x x." And there also appears to be no hint of any intention on the part of private respondent to mislead the clerk of court in assessing the correct fees, or to evade the payment of the correct fees.

Hence, this petition raising the following assignment of errors:

Assignment of Errors

THE RESPONDENT COURT OF APPEALS ERRED IN CHARACTERIZING THE NATURE OF PRIVATE RESPONDENT'S ACTION AS ONE FOR SPECIFIC PERFORMANCE AND NOT ONE FOR RECOVERY OF PROPERTY.

THE RESPONDENT COURT OF APPEALS ERRED IN REFUSING TO TAKE COGNIZANCE OF THE TACAY [v. Regional Trial Court, 180 SCRA 433 (1989)] AND BPI CREDIT [v. Court of Appeals, 204 SCRA 601 (1991)] RULINGS.

THE RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT THE LOWER COURT FAILED TO ACQUIRE JURISDICTION OVER PRIVATE RESPONDENT'S COMPLAINT DUE TO NON-PAYMENT OF THE REQUIRED FILING FEES.

Petitioner NSC correctly argues that the action in this case is for the recovery of property rather than for specific performance and, hence, the docket fee should be based on the value of the property sought to be recovered. It is similar to an action in which petitioner seeks the execution of a deed of sale of a parcel of land in his favor. Such action has been held to be for the recovery of the real property and not for specific performance since his primary objective is to regain the ownership and possession of the parcel of land. In *Ruiz v. J.M. Tuason & Co., Inc.*, it was held:[5]

Appellant contends that the present action is transitory because it is one for specific performance and its object is to compel J. M. Tuason & Co., Inc. to execute a final deed of sale of the property in question in favor of appellant founded upon compliance with the compromise agreement wherein said company recognized the sale made by Florencio Deudor of said property in favor of Jose Dinglasan who, in the same agreement, was recognized by the company as a purchaser who had already made partial payment of the purchased price of the land.

This contention has no merit. Although appellant's complaint is entitled to be one for specific performance, yet the fact that he asked that a deed of sale of a parcel of land situated in Quezon City be issued in his favor and that a transfer certificate of title covering said land be issued to him shows that the primary objective and nature of the action is to recover the parcel of land itself because to execute in favor of appellant the conveyance requested there is need to make a finding that he is the owner of the land which in the last analysis resolves itself into an issue of ownership.

Similarly, if, as in this case, plaintiff, herein private respondent Jacinto, seeks the execution in his favor of a deed of assignment of shares of stock, it follows that the action is for the recovery of personal property, the main purpose of which is to regain the ownership and possession of the said shares of stock.

Accordingly, as petitioner NSC contends, private respondent Jacinto should pay docket fees based on the value of the shares of stock and the amount of damages he seeks to recover. Under Rule 141, §7(a) of the Rules of Court as it stood at the time of the filing of the complaint against petitioner, docket fees for ordinary civil actions should be based on the total sum claimed, exclusive of interest, or the stated value of the property in litigation.[6] Thus, the docket fees should be computed on the basis of the value of the property and the amount of related damages claimed, exclusive of interest. As we held in *Tacay v. Regional Trial Court*,[7] where the action involves real property and a related claim for damages as well, the legal fees shall be assessed on the basis of both (a) the value of the property and (b) the total amount of related damages sought. The Court acquires jurisdiction over the action if the filing of the initiatory pleading is accompanied by the payment of the requisite fees, or, if the fees are not paid at the time of the filing of the pleading, as of the time of full payment of the fees within such reasonable time as the court may grant, unless, of course, prescription has set in in the meantime.

It does not follow, however, that the trial court should have dismissed the complaint for failure of private respondent to pay the correct amount of docket fees. Although the payment of the proper docket fees is a

jurisdictional requirement, the trial court may allow the plaintiff in an action to pay the same within a reasonable time before the expiration of the applicable prescriptive or reglementary period.[8] If the plaintiff fails to comply with this requirement, the defendant should timely raise the issue of jurisdiction or else he would be considered in estoppel. In the latter case, the balance between the appropriate docket fees and the amount actually paid by the plaintiff will be considered a lien on any award he may obtain in his favor. Thus, in *Pantranco North Express, Inc. v. Court of Appeals*, we held:[9]

The petitioner raised the issue regarding jurisdiction for the first time in its Brief filed with the public respondent in CA-G.R. CV No. 26220 on 2 February 1991. After vigorously participating in all stages of the case before the trial court and even invoking the trial court's authority in order to ask for affirmative relief, the petitioner is effectively barred by estoppel from challenging the trial court's jurisdiction. Although the issue of jurisdiction may be raised at any stage of the proceedings as the same is conferred by law, it is nonetheless settled that a party may be barred from raising it on ground of laches or estoppel. The deficiency in the payment of the docket fees must, however, be considered a lien on the judgment which must be remitted to the clerk of court of the court a quo upon the execution of the judgment.

In the case at bar, petitioner NSC filed in 1990 a motion to dismiss but did not raise this point. Instead it based his motion on prescription. Upon the denial by the trial court of its motion to dismiss, it filed an answer, submitted its pre-trial brief, and participated in the proceedings before the trial court. It was only in 1993 $\frac{3}{4}$ more than three years after filing its motion to dismiss $\frac{3}{4}$ that petitioner NSC again filed a motion to dismiss the action on the ground of lack of jurisdiction. Clearly, petitioner is estopped from raising this issue. Indeed, while the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.[10]

WHEREFORE, the decision of the Court of Appeals, dated September 11, 1995, is AFFIRMED. The deficiency in the payment of the docket fees shall be a lien on any judgment which may be rendered in favor of private respondent Jose P. Jacinto.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Justice Artemon Luna and concurred in by Justices Ramon Mabutas, Jr. and Jose de la Rama.

[2] Comment, Annex 1, Rollo, pp. 83-85.

[3] *Id.*, pp. 84-85.

[4] Petition, Annex F, Rollo, pp. 58-59.

[5] 7 SCRA 202, 206-207 (1963).

[6] As amended by Administrative Circular No. 11-94, Rule 141, §7(a) now provides that docket fees for ordinary civil actions should be based on "the total sum claimed, inclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, or the stated value of the property in litigation."

[7] 180 SCRA 433, 444 (1989).

[8] *Sun Insurance Office, Ltd. v. Asuncion*, 170 SCRA 274 (1989).

[9] 224 SCRA 477, 491 (1993).

[10] Martinez v. De la Merced, 174 SCRA 182 (1989).

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