SPS. APOLINARIO MELO AND LILIA T. MELO, AND JULIA BARRETO, PETITIONERS VS. THE HON. COURT OF APPEALS AND ARSENIA CORONEL, RESPONDENTS.

G.R. No. 123686. November 16, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the resolution[1] of the Court of Appeals, dated January 2, 1996, affirming the denial by the Regional Trial Court, Branch 57, Angeles City, of the motion to dismiss filed by petitioners spouses Apolinario and Lilia Melo and Julia Barreto.

The facts are not disputed:

Private respondent Arsenia Coronel mortgaged to the Rural Bank of Mabalacat, Inc. a parcel of land in Angeles City, covered by T.C.T. No. 43872, to secure a loan of P60,000.00. Because of her failure to pay the loan, the bank caused the extra-judicial foreclosure of the mortgage pursuant to Act. No. 3135, as amended by Act No. 4118, as a result of which the land was sold to petitioners as the highest bidders. Petitioners then filed a Petition for the Ex-Parte Issuance of a Writ of Possession with the Regional Trial Court, Branch 60, Angeles City.[2]

To counter the petition, private respondent filed, on June 8, 1995, a complaint for injunction against petitioners in the Regional Trial Court, Branch 57, Angeles City. In turn, petitioners moved to dismiss private respondent's action on the following grounds: (1) litis pendentia; (2) forum shopping; and (3) failure of private respondent to attach a certification of non-forum shopping to her complaint.[3]

On July 3, 1995, private respondent amended her complaint by including the certification of non-forum shopping which stated:[4]

> AMENDED VERIFICATION/CERTIFICATION
>
> I, ARSENIA CORONEL, being duly sworn in accordance with law do hereby declare and depose:
>
> - That I am the plaintiff in Civil Case No. 8022 filed before Branch 57 of the Regional Trial Court of Angeles City;
>
> - That I caused the foregoing complaint to be prepared and have read and understood the allegations thereof;
>
> - That said allegations are true and correct of my own personal knowledge;
>
> - That I have not commenced any other complaint/petition involving the same issues similar to the instant complaint;
>
> - That to the best of my knowledge or belief, there is no other complaint/petition filed involving the same issues at bar;
>
> - That there is, however, a Petition for Issuance of Writ of Possession filed against me by the defendants herein

> docketed as Cad. Case No. A-124-694 before Branch 60 of the Regional Trial Court, Angeles City;
>
> - That I execute this affidavit to attest to the truth of the foregoing.
>
> FURTHER AFFIANT SAYETH NONE.
>
> (SGD. ARSENIA CORONEL)

On August 7, 1995, the trial court denied petitioners' motion to dismiss explaining -

> A reading of the complaint shows that the plaintiff, in order to exercise her right of redemption, seeks to prevent the defendants and the Register of Deeds of Angeles City from doing something. Paragraph 14 of the complaint reads as follows:
> "14. That defendants are about to consolidate the ownership of the plaintiff's property (T.C.T. No. 43872 of the Register of Deeds of Angeles City) in their names and register the said consolidation of ownership with the Register of Deeds of Angeles City, upon the expiry date of the redemption period (June 9, 1995); the desire and willingness of the plaintiff to exercise her right of redemption notwithstanding."

It only avers that she has a right to redeem the property and that she is entitled to the reliefs prayed for, such as the issuance of a permanent injunction. Furthermore, the complaint states a sufficient cause of action which is set out in its paragraph 4 to 6, inclusive, that is, the right to redeem the property and to prevent the defendant-spouses Apolinario Melo and Lilia T. Melo and defendant Julio Barreto to consolidate their ownership over the property.

. . . .

On Forum Shopping:

In the case at bar, there is no forum shopping. There is forum shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another, and the principle applies not only with respect to suits filed in the courts while an administrative proceeding is pending, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling.

The petition for the issuance of a writ of possession and the present case, as heretofore stated, are oceans apart, so to speak. Thus, even if a writ of possession is issued, this will not prevent the plaintiff from exercising her right to redeem the property, if warranted. And it may be added that an indemnity bond is required to be posted in order that possession may then be obtained under a writ which may be applied for ex-parte, pursuant to Section 7 of Act 3135 as amended by Act 116.

Plaintiff, in compliance with Circular No. 28-91 and Section 17 of the Interim Rules and Guidelines, submitted an Amended Verification/Certification.

On certiorari brought by petitioners, the Court of Appeals upheld the trial court's order. It ruled:

> What happened in this case was totally different since the ex-parte petition for the issuance of a writ of possession was filed by the petitioners against private respondent. On the other hand, the complaint with preliminary injunction was filed by the private respondent against herein petitioners. It is not a case, therefore, of the private respondent instituting two (2) remedies in two (2) different fora. Her case entailed only one (1) forum, to be precise, with the RTC, Branch 57.

Hence, this petition for review on certiorari, raising the following issues: (1) whether private respondent is guilty of forum shopping by filing her complaint with preliminary injunction before the Regional Trial Court, Branch 57, Angeles City when there was a Petition for Ex-Parte Issuance of Writ of Possession pending before Branch 60 of the same court; and (2) whether there was substantial compliance by private respondent with the rule requiring

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the submission of a certification of non-forum shopping together with initiatory pleadings.

We shall deal with these issues seriatim.

To begin with, the essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[5] It exists where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in another.[6] On the other hand, for litis pendentia to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case.[7]

But, in the instant case, the petition for the Ex-Parte Issuance of a Writ of Possession which petitioners filed involved a different cause of action from the complaint for injunction filed by private respondent. Petitioners sought possession of the subject property, whereas private respondent sought to enjoin them from consolidating title over the same. Petitioners' action is founded on Act No. 3135, §7, which gives the purchaser at a public auction the right to have possession of the property sold to him during the redemption period even if eventually they do not succeed in consolidating their title to it. On the other hand, private respondents' action is based on R.A. No. 337, §78, which gives a mortgagor the right to redeem the property sold at foreclosure sale within one year thereof. Thus, private respondent could very well oppose petitioners' action to obtain possession of the property while trying to prevent them from consolidating title in a separate case. The decision in one is not conclusive of the other.

Nonetheless, petitioners contend that private respondent failed to comply with the requirements of Administrative Circular No. 09-94 on non-forum shopping and, therefore, her complaint should have been dismissed by the trial court. We find this contention to be well taken.

Administrative Circular No. 09-94 states in pertinent parts:

> The plaintiff, petitioner, applicant or principal party seeking relief in the complaint, petition, application or other initiatory pleadings shall certify under oath in such original pleadings, or in a sworn certification annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertakings: (a) he has not heretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (c) if there is any such action or proceeding which is either pending or may have been terminated, he must state the status thereof; and, (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, he undertakes to report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification contemplated herein have been filed.
>
> . . . .
>
> Any violation of this Circular shall be cause for the dismissal of the complaint, petition, application or other initiatory pleading, upon motion and after hearing. However, any clearly willful and deliberate forum shopping by any party and his counsel through the filing of multiple complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the undertakings therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary

> proceedings against the counsel and the filing of a criminal action against the guilty party.

The requirement to file a certificate of non-forum shopping is mandatory.[8] Failure to comply with this requirement cannot be excused by the fact that plaintiff is not guilty of forum shopping. The Court of Appeals, therefore, erred in concluding that Administrative Circular No. 04-94 did not apply to private respondent's case merely because her complaint was not based on petitioner's cause of action. The Circular applies to any complaint, petition, application, or other initiatory pleading, regardless of whether the party filing it has actually committed forum shopping. Every party filing a complaint or any other initiatory pleading is required to swear under oath that he has not committed nor will he commit forum shopping. Otherwise, we would have an absurd situation where the parties themselves would be the judge of whether their actions constitute a violation of said Circular, and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such interpretation of the requirement would defeat the very purpose of Circular 04-94.

Indeed, compliance with the certification against forum shopping is separate from, and independent of, the avoidance of forum shopping itself. Thus, there is a difference in the treatment - in terms of imposable sanctions - between failure to comply with the certification requirement and violation of the prohibition against forum shopping. The former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt.

Nor can subsequent compliance with the requirement excuse a party's failure to comply in the first instance. As Justice Regalado explains in his works on the Revised Rules of Civil Procedure:

> - This section, with modifications, is taken from Administrative Circular No. 04-94 issued by the Supreme Court on February 8, 1994 for this purpose explained therein:
>
> "Revised Circular No. 28-91, dated February 8, 1994 applies to and governs the filing of petitions in the Supreme Court and the Court of Appeals and is intended to prevent the multiple filing of petitions or complaints involving the same issues in other tribunals or agencies as a form of forum shopping.
>
> "Complementary thereto and for the same purpose, the following requirements, in addition to those in pertinent provisions of the Rules of Court and existing circulars, shall be strictly complied with in the filing of complaints, petitions, applications or other initiatory pleadings in all courts and agencies other than the Supreme Court and the Court of Appeals and shall be subject to the sanctions provided hereunder."

The provisions of Revised Circular No. 28-91 have been adopted and incorporated in Rules 42, 43, 45, 46, 47, 64 and 65.

- Aside from some amendments to the original sanctions imposed in Administrative Circular 04-94, this section reiterates as a regular requirement under the Rules that the certification against forum shopping may be incorporated in the complaint or contained in a sworn certification annexed thereto and simultaneously filed therewith. This enunciates the policy of the Supreme Court expressed as early as Circular No. 1-88 that subsequent compliance with the requirements for the filing of petitions or motions is not a ground for reconsideration of the dismissal of said pleadings, except for compelling reasons. In light hereof, the view that belated filing of the certification may be deemed a substantial compliance should no longer be sustained.

With respect to the contents of the certification which the pleader may prepare, the rule of substantial compliance may be availed of. While this section requires that it be strictly complied with, it merely underscores its mandatory nature in that it cannot be altogether dispensed with or its requirements completely disregarded but it does not thereby prevent substantial compliance on this aspect of its provisions under justifiable circumstances (see Gabionza vs. Court of Appeals, et al., G.R. No. 112547, July 18, 1994). This certification on non-forum shopping was designed to promote and facilitate the orderly administration of justice and, therefore, should not be

interpreted with absolute literalness (Loyola vs. Court of Appeals, et al., G.R. No. 117186, June 29, 1995).

More importantly, this section specifically states that the "(f)ailure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing." This will obviate the former practice of some trial courts in allowing amendment of the incomplete pleading for the incorporation therein of the certificate against forum shopping. That was erroneous since this undertaking against multiple filing of cases is not part of the operative facts required to be alleged in an initiatory pleading, such as allegations on the cause of action, but is a special requirement for admission of the initiatory pleading for filing in court, hence the absence thereof is not curable by mere amendment.

Instead, the case shall be dismissed on motion but, just like the practice under Revised Circular No. 28-91 in the appellate courts, such dismissal shall be without prejudice. This more liberal rule is distinguishable from the effects of dismissal of the case for non-compliance with the Rules under the provisions of Sec. 3, Rule 17 which presupposes the pendency of the case, whereas what is contemplated in this section is the initiation of the case. The case may consequently be refiled within the balance of the reglementary period but subject to the provisions on prescription of actions.

In those cases in which we excused non-compliance with the requirements of Administrative Circular No. 04-94, there were special circumstances or compelling reasons which made the strict application of said Circular clearly unjustified.[9] In contrast private respondent gave no reason at all for her failure to submit the certificate in question. Indeed, she cannot even feign ignorance of the Circular as her complaint was filed more than one year after the effectivity thereof.

We are not unmindful of the adverse consequence to private respondent of a dismissal of her complaint, nor of the time, effort, and money spent litigating up to this Court solely on a so-called technical ground. Nonetheless, we hold that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined.

WHEREFORE, the resolution of the Court of Appeals is REVERSED, the orders of the Regional Trial Court of Angeles City, Branch 57, in Civil Case No. 8022 are SET ASIDE, and the complaint filed against petitioners is DISMISSED without prejudice.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Bernardo LL. Salas and concurred in by Justices Pedro A. Ramirez and Ma. Alicia Austria-Martinez.

[2] Petition, Rollo, pp. 13-14.

[3] Id., pp. 14-15.

[4] Comment, Annex A, Rollo, pp. 25-26.

[5] Executive Secretary v. Gordon, G.R. No. 134171, November 18, 1998.

[6] Solid Homes, Inc. v. Court of Appeals, 271 SCRA 157 (1997).

[7] Valencia v. Court of Appeals, 256 SCRA 478 (1996).

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[8] Loyola v. Court of Appeals, 245 SCRA 477 (1995).

[9] See Kavinta v. Castillo, Jr., 249 SCRA 605 (1995); Loyola v. Court of Appeals, 245 SCRA 477 (1995); and MSF Tire and Rubber, Inc., v. Court of Appeals, G.R. No. 128632, August 5, 1999.

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