EMILIO EMNACE, PETITIONER, VS. COURT OF APPEALS, ESTATE OF VICENTE TABANAO, SHERWIN TABANAO, VICENTE WILLIAM TABANAO, JANETTE TABANAO DEPOSOY, VICENTA MAY TABANAO VARELA, ROSELA...

G.R. No. 126334. November 23, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner Emilio Emnace, Vicente Tabanao and Jacinto Divinagracia were partners in a business concern known as Ma. Nelma Fishing Industry. Sometime in January of 1986, they decided to dissolve their partnership and executed an agreement of partition and distribution of the partnership properties among them, consequent to Jacinto Divinagracia's withdrawal from the partnership.[1] Among the assets to be distributed were five (5) fishing boats, six (6) vehicles, two (2) parcels of land located at Sto. Niño and Talisay, Negros Occidental, and cash deposits in the local branches of the Bank of the Philippine Islands and Prudential Bank.

Throughout the existence of the partnership, and even after Vicente Tabanao's untimely demise in 1994, petitioner failed to submit to Tabanao's heirs any statement of assets and liabilities of the partnership, and to render an accounting of the partnership's finances. Petitioner also reneged on his promise to turn over to Tabanao's heirs the deceased's 1/3 share in the total assets of the partnership, amounting to P30,000,000.00, or the sum of P10,000,000.00, despite formal demand for payment thereof.[2]

Consequently, Tabanao's heirs, respondents herein, filed against petitioner an action for accounting, payment of shares, division of assets and damages.[3] In their complaint, respondents prayed as follows:

> - Defendant be ordered to render the proper accounting of all the assets and liabilities of the partnership at bar; and
>
> - After due notice and hearing defendant be ordered to pay/remit/deliver/surrender/yield to the plaintiffs the following:
>
> - No less than One Third (1/3) of the assets, properties, dividends, cash, land(s), fishing vessels, trucks, motor vehicles, and other forms and substance of treasures which belong and/or should belong, had accrued and/or must accrue to the partnership;
>
> - No less than Two Hundred Thousand Pesos (P200,000.00) as moral damages;
>
> - Attorney's fees equivalent to Thirty Percent (30%) of the entire share/amount/award which the Honorable Court may resolve the plaintiffs as entitled to plus P1,000.00 for every appearance in court.[4]

Petitioner filed a motion to dismiss the complaint on the grounds of improper venue, lack of jurisdiction over the nature of the action or suit, and lack of capacity of the estate of Tabanao to sue.[5] On August 30, 1994, the trial court denied the motion to dismiss. It held that venue was properly laid because, while realties were involved, the

action was directed against a particular person on the basis of his personal liability; hence, the action is not only a personal action but also an action in personam. As regards petitioner's argument of lack of jurisdiction over the action because the prescribed docket fee was not paid considering the huge amount involved in the claim, the trial court noted that a request for accounting was made in order that the exact value of the partnership may be ascertained and, thus, the correct docket fee may be paid. Finally, the trial court held that the heirs of Tabanao had a right to sue in their own names, in view of the provision of Article 777 of the Civil Code, which states that the rights to the succession are transmitted from the moment of the death of the decedent.[6]

The following day, respondents filed an amended complaint,[7] incorporating the additional prayer that petitioner be ordered to "sell all (the partnership's) assets and thereafter pay/remit/deliver/surrender/yield to the plaintiffs" their corresponding share in the proceeds thereof. In due time, petitioner filed a manifestation and motion to dismiss,[8] arguing that the trial court did not acquire jurisdiction over the case due to the plaintiffs' failure to pay the proper docket fees. Further, in a supplement to his motion to dismiss,[9] petitioner also raised prescription as an additional ground warranting the outright dismissal of the complaint.

On June 15, 1995, the trial court issued an Order,[10] denying the motion to dismiss inasmuch as the grounds raised therein were basically the same as the earlier motion to dismiss which has been denied. Anent the issue of prescription, the trial court ruled that prescription begins to run only upon the dissolution of the partnership when the final accounting is done. Hence, prescription has not set in the absence of a final accounting. Moreover, an action based on a written contract prescribes in ten years from the time the right of action accrues.

Petitioner filed a petition for certiorari before the Court of Appeals,[11] raising the following issues:

- Whether or not respondent Judge acted without jurisdiction or with grave abuse of discretion in taking cognizance of a case despite the failure to pay the required docket fee;

- Whether or not respondent Judge acted without jurisdiction or with grave abuse of discretion in insisting to try the case which involve (sic) a parcel of land situated outside of its territorial jurisdiction;

- Whether or not respondent Judge acted without jurisdiction or with grave abuse of discretion in allowing the estate of the deceased to appear as party plaintiff, when there is no intestate case and filed by one who was never appointed by the court as administratrix of the estates; and

- Whether or not respondent Judge acted without jurisdiction or with grave abuse of discretion in not dismissing the case on the ground of prescription.

On August 8, 1996, the Court of Appeals rendered the assailed decision,[12] dismissing the petition for certiorari, upon a finding that no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the trial court in issuing the questioned orders denying petitioner's motions to dismiss.

Not satisfied, petitioner filed the instant petition for review, raising the same issues resolved by the Court of Appeals, namely:

- Failure to pay the proper docket fee;

- Parcel of land subject of the case pending before the trial court is outside the said court's territorial jurisdiction;

- Lack of capacity to sue on the part of plaintiff heirs of Vicente Tabanao; and

- Prescription of the plaintiff heirs' cause of action.

It can be readily seen that respondents' primary and ultimate objective in instituting the action below was to

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recover the decedent's 1/3 share in the partnership's assets. While they ask for an accounting of the partnership's assets and finances, what they are actually asking is for the trial court to compel petitioner to pay and turn over their share, or the equivalent value thereof, from the proceeds of the sale of the partnership assets. They also assert that until and unless a proper accounting is done, the exact value of the partnership's assets, as well as their corresponding share therein, cannot be ascertained. Consequently, they feel justified in not having paid the commensurate docket fee as required by the Rules of Court.

We do not agree. The trial court does not have to employ guesswork in ascertaining the estimated value of the partnership's assets, for respondents themselves voluntarily pegged the worth thereof at Thirty Million Pesos (P30,000,000.00). Hence, this case is one which is really not beyond pecuniary estimation, but rather partakes of the nature of a simple collection case where the value of the subject assets or amount demanded is pecuniarily determinable.[13] While it is true that the exact value of the partnership's total assets cannot be shown with certainty at the time of filing, respondents can and must ascertain, through informed and practical estimation, the amount they expect to collect from the partnership, particularly from petitioner, in order to determine the proper amount of docket and other fees.[14] It is thus imperative for respondents to pay the corresponding docket fees in order that the trial court may acquire jurisdiction over the action.[15]

Nevertheless, unlike in the case of Manchester Development Corp. v. Court of Appeals,[16] where there was clearly an effort to defraud the government in avoiding to pay the correct docket fees, we see no attempt to cheat the courts on the part of respondents. In fact, the lower courts have noted their expressed desire to remit to the court "any payable balance or lien on whatever award which the Honorable Court may grant them in this case should there be any deficiency in the payment of the docket fees to be computed by the Clerk of Court."[17] There is evident willingness to pay, and the fact that the docket fee paid so far is inadequate is not an indication that they are trying to avoid paying the required amount, but may simply be due to an inability to pay at the time of filing. This consideration may have moved the trial court and the Court of Appeals to declare that the unpaid docket fees shall be considered a lien on the judgment award.

Petitioner, however, argues that the trial court and the Court of Appeals erred in condoning the non-payment of the proper legal fees and in allowing the same to become a lien on the monetary or property judgment that may be rendered in favor of respondents. There is merit in petitioner's assertion. The third paragraph of Section 16, Rule 141 of the Rules of Court states that:

> The legal fees shall be a lien on the monetary or property judgment in favor of the pauper-litigant.

Respondents cannot invoke the above provision in their favor because it specifically applies to pauper-litigants. Nowhere in the records does it appear that respondents are litigating as paupers, and as such are exempted from the payment of court fees.[18]

The rule applicable to the case at bar is Section 5(a) of Rule 141 of the Rules of Court, which defines the two kinds of claims as: (1) those which are immediately ascertainable; and (2) those which cannot be immediately ascertained as to the exact amount. This second class of claims, where the exact amount still has to be finally determined by the courts based on evidence presented, falls squarely under the third paragraph of said Section 5(a), which provides:

> In case the value of the property or estate or the sum claimed is less or more in accordance with the appraisal of the court, the difference of fee shall be refunded or paid as the case may be. (Underscoring ours)

In Pilipinas Shell Petroleum Corporation v. Court of Appeals,[19] this Court pronounced that the above-quoted provision "clearly contemplates an initial payment of the filing fees corresponding to the estimated amount of the claim subject to adjustment as to what later may be proved."[20] Moreover, we reiterated therein the principle that

the payment of filing fees cannot be made contingent or dependent on the result of the case. Thus, an initial payment of the docket fees based on an estimated amount must be paid simultaneous with the filing of the complaint. Otherwise, the court would stand to lose the filing fees should the judgment later turn out to be adverse to any claim of the respondent heirs.

The matter of payment of docket fees is not a mere triviality. These fees are necessary to defray court expenses in the handling of cases. Consequently, in order to avoid tremendous losses to the judiciary, and to the government as well, the payment of docket fees cannot be made dependent on the outcome of the case, except when the claimant is a pauper-litigant.

Applied to the instant case, respondents have a specific claim - 1/3 of the value of all the partnership assets - but they did not allege a specific amount. They did, however, estimate the partnership's total assets to be worth Thirty Million Pesos (P30,000,000.00), in a letter[21] addressed to petitioner. Respondents cannot now say that they are unable to make an estimate, for the said letter and the admissions therein form part of the records of this case. They cannot avoid paying the initial docket fees by conveniently omitting the said amount in their amended complaint. This estimate can be made the basis for the initial docket fees that respondents should pay. Even if it were later established that the amount proved was less or more than the amount alleged or estimated, Rule 141, Section 5(a) of the Rules of Court specifically provides that the court may refund the excess or exact additional fees should the initial payment be insufficient. It is clear that it is only the difference between the amount finally awarded and the fees paid upon filing of this complaint that is subject to adjustment and which may be subjected to a lien.

In the oft-quoted case of Sun Insurance Office, Ltd. v. Hon. Maximiano Asuncion,[22] this Court held that when the specific claim "has been left for the determination by the court, the additional filing fee therefor shall constitute a lien on the judgment and it shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee." Clearly, the rules and jurisprudence contemplate the initial payment of filing and docket fees based on the estimated claims of the plaintiff, and it is only when there is a deficiency that a lien may be constituted on the judgment award until such additional fee is collected.

Based on the foregoing, the trial court erred in not dismissing the complaint outright despite their failure to pay the proper docket fees. Nevertheless, as in other procedural rules, it may be liberally construed in certain cases if only to secure a just and speedy disposition of an action. While the rule is that the payment of the docket fee in the proper amount should be adhered to, there are certain exceptions which must be strictly construed.[23]

In recent rulings, this Court has relaxed the strict adherence to the Manchester doctrine, allowing the plaintiff to pay the proper docket fees within a reasonable time before the expiration of the applicable prescriptive or reglementary period.[24]

In the recent case of National Steel Corp. v. Court of Appeals,[25] this Court held that:

> 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 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. If the plaintiff fails

> to comply within 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 or any award he may obtain in his favor. (Underscoring ours)

Accordingly, the trial court in the case at bar should determine the proper docket fee based on the estimated amount that respondents seek to collect from petitioner, and direct them to pay the same within a reasonable time, provided the applicable prescriptive or reglementary period has not yet expired. Failure to comply therewith, and upon motion by petitioner, the immediate dismissal of the complaint shall issue on jurisdictional grounds.

On the matter of improper venue, we find no error on the part of the trial court and the Court of Appeals in holding that the case below is a personal action which, under the Rules, may be commenced and tried where the defendant resides or may be found, or where the plaintiffs reside, at the election of the latter.[26]

Petitioner, however, insists that venue was improperly laid since the action is a real action involving a parcel of land that is located outside the territorial jurisdiction of the court a quo. This contention is not well-taken. The records indubitably show that respondents are asking that the assets of the partnership be accounted for, sold and distributed according to the agreement of the partners. The fact that two of the assets of the partnership are parcels of land does not materially change the nature of the action. It is an action in personam because it is an action against a person, namely, petitioner, on the basis of his personal liability. It is not an action in rem where the action is against the thing itself instead of against the person.[27] Furthermore, there is no showing that the parcels of land involved in this case are being disputed. In fact, it is only incidental that part of the assets of the partnership under liquidation happen to be parcels of land.

The time-tested case of Claridades v. Mercader, et al.,[28] settled this issue thus:

> The fact that plaintiff prays for the sale of the assets of the partnership, including the fishpond in question, did not change the nature or character of the action, such sale being merely a necessary incident of the liquidation of the partnership, which should precede and/or is part of its process of dissolution.

The action filed by respondents not only seeks redress against petitioner. It also seeks the enforcement of, and petitioner's compliance with, the contract that the partners executed to formalize the partnership's dissolution, as well as to implement the liquidation and partition of the partnership's assets. Clearly, it is a personal action that, in effect, claims a debt from petitioner and seeks the performance of a personal duty on his part.[29] In fine, respondents' complaint seeking the liquidation and partition of the assets of the partnership with damages is a personal action which may be filed in the proper court where any of the parties reside.[30] Besides, venue has nothing to do with jurisdiction for venue touches more upon the substance or merits of the case.[31] As it is, venue in this case was properly laid and the trial court correctly ruled so.

On the third issue, petitioner asserts that the surviving spouse of Vicente Tabanao has no legal capacity to sue since she was never appointed as administratrix or executrix of his estate. Petitioner's objection in this regard is misplaced. The surviving spouse does not need to be appointed as executrix or administratrix of the estate before she can file the action. She and her children are complainants in their own right as successors of Vicente Tabanao. From the very moment of Vicente Tabanao's death, his rights insofar as the partnership was concerned were transmitted to his heirs, for rights to the succession are transmitted from the moment of death of the decedent.[32]

Whatever claims and rights Vicente Tabanao had against the partnership and petitioner were transmitted to respondents by operation of law, more particularly by succession, which is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance of a person are transmitted.[33] Moreover, respondents became owners of their respective hereditary shares from the moment

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Vicente Tabanao died.[34]

A prior settlement of the estate, or even the appointment of Salvacion Tabanao as executrix or administratrix, is not necessary for any of the heirs to acquire legal capacity to sue. As successors who stepped into the shoes of their decedent upon his death, they can commence any action originally pertaining to the decedent.[35] From the moment of his death, his rights as a partner and to demand fulfillment of petitioner's obligations as outlined in their dissolution agreement were transmitted to respondents. They, therefore, had the capacity to sue and seek the court's intervention to compel petitioner to fulfill his obligations.

Finally, petitioner contends that the trial court should have dismissed the complaint on the ground of prescription, arguing that respondents' action prescribed four (4) years after it accrued in 1986. The trial court and the Court of Appeals gave scant consideration to petitioner's hollow arguments, and rightly so.

The three (3) final stages of a partnership are: (1) dissolution; (2) winding-up; and (3) termination.[36] The partnership, although dissolved, continues to exist and its legal personality is retained, at which time it completes the winding up of its affairs, including the partitioning and distribution of the net partnership assets to the partners.[37] For as long as the partnership exists, any of the partners may demand an accounting of the partnership's business. Prescription of the said right starts to run only upon the dissolution of the partnership when the final accounting is done.[38]

Contrary to petitioner's protestations that respondents' right to inquire into the business affairs of the partnership accrued in 1986, prescribing four (4) years thereafter, prescription had not even begun to run in the absence of a final accounting. Article 1842 of the Civil Code provides:

> The right to an account of his interest shall accrue to any partner, or his legal representative as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

Applied in relation to Articles 1807 and 1809, which also deal with the duty to account, the above-cited provision states that the right to demand an accounting accrues at the date of dissolution in the absence of any agreement to the contrary. When a final accounting is made, it is only then that prescription begins to run. In the case at bar, no final accounting has been made, and that is precisely what respondents are seeking in their action before the trial court, since petitioner has failed or refused to render an accounting of the partnership's business and assets. Hence, the said action is not barred by prescription.

In fine, the trial court neither erred nor abused its discretion when it denied petitioner's motions to dismiss. Likewise, the Court of Appeals did not commit reversible error in upholding the trial court's orders. Precious time has been lost just to settle this preliminary issue, with petitioner resurrecting the very same arguments from the trial court all the way up to the Supreme Court. The litigation of the merits and substantial issues of this controversy is now long overdue and must proceed without further delay.

WHEREFORE, in view of all the foregoing, the instant petition is DENIED for lack of merit, and the case is REMANDED to the Regional Trial Court of Cadiz City, Branch 60, which is ORDERED to determine the proper docket fee based on the estimated amount that plaintiffs therein seek to collect, and direct said plaintiffs to pay the same within a reasonable time, provided the applicable prescriptive or reglementary period has not yet expired. Thereafter, the trial court is ORDERED to conduct the appropriate proceedings in Civil Case No. 416-C.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Record, pp. 30-31.

[2] Ibid., pp. 32-33.

[3] Civil Case No. 416-C before the RTC of Cadiz City, Branch 60.

[4] Rollo, p. 41.

[5] Ibid., pp. 44-47.

[6] Id., pp. 108-112.

[7] Appendix "H", Rollo, pp. 93-100.

[8] Appendix "I", Rollo, pp. 101-104.

[9] Appendix "J", Rollo, pp. 105-107.

[10] Appendix "L", Rollo, pp. 113-115.

[11] CA-G.R. No. 37878, Records, pp. 2-18.

[12] Rollo, pp. 119-126.

[13] Colarina v. Court of Appeals, 303 SCRA 647, 652-653 (1999).

[14] Gregorio v. Angeles, 180 SCRA 490, 494-495 (1989).

[15] Ballatan v. Court of Appeals, 304 SCRA 34, 42 (1999).

[16] 149 SCRA 562 (1987).

[17] Opposition to Motion to Dismiss, Records, p. 60.

[18] Pilipinas Shell Petroleum Corp. v. Court of Appeals, 171 SCRA 674, 681 (1989).

[19] Supra.

[20] Ibid., p. 680.

[21] Record, p. 32.

[22] 170 SCRA 274, 285 (1989).

[23] Colarina, Supra, p. 654.

[24] Colarina, Supra; De Zuzuarregui v. Court of Appeals, 174 SCRA 54, 59 (1989); Pantranco North Express, Inc. v. Court of Appeals, 224 SCRA 477, 491 (1993); Talisay-Silay Milling Co. v. Asociacion de Agricultores de Talisay-Silay, Inc., 247 SCRA 361, 384-385 (1995).

[25] 302 SCRA 522, 531 (1999).

[26] Section 2(b), Rule 4 of the Rules of Court.

[27] Asiavest Limited v. Court of Appeals, 296 SCRA 539, 552 (1998).

[28] 17 SCRA 1, 4 (1966).

[29] Ruiz v. Court of Appeals, 303 SCRA 637, 645 (1999).

[30] La Tondeña Distillers, Inc. v. Ponferrada, 264 SCRA 540, 545 (1996).

[31] Philippine Banking Corp. v. Tensuan, 228 SCRA 385, 396 (1993).

[32] Coronel v. Court of Appeals, 263 SCRA 15, 34 (1996); Article 777 of the Civil Code.

[33] Civil Code, Art. 774.

[34] Opulencia v. Court of Appeals, 293 SCRA 385, 394 (1998).

[35] Heirs of Ignacio Conti v. Court of Appeals, 300 SCRA 345, 354 (1998).

[36] Idos v. Court of Appeals, 296 SCRA 194, 205 (1998).

[37] Sy v. Court of Appeals, 313 SCRA 328, 347 (1999); Ortega v. Court of Appeals, 245 SCRA 529, 536 (1995).

[38] Fue Leung v. IAC, 169 SCRA 746, 755 (1989).

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