

CRISTINA C. QUINSAY, PETITIONER, VS. COURT OF APPEALS, HON. ELSIE LIGOT-TELAN, CESAR M. QUINSAY, RESPONDENTS.*G.R. No. 127058. August 31, 2000*

Ponente: BUENA, J.

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Petitioner and private respondent were married on December 18, 1968. They have eight (8) children. During their cohabitation, the spouses accumulated conjugal assets worth millions of pesos. Way back in 1994, after the parties had separated in fact, private respondent filed a petition for declaration of nullity of their marriage on the ground of psychological incapacity. At the pre-trial, the court granted the spouses a 6-month cooling off period and within thirty (30) days to arrive at an agreement for the dissolution of their conjugal regime. Pursuant to the trial court's order, the parties entered into an "Agreement for the Dissolution of the Conjugal Partnership and Separation of Property," which, after hearing, was approved by the trial court on September 30, 1994. However, on January 31, 1995, petitioner filed an omnibus motion including a motion to amend the said agreement for the inclusion of other conjugal properties, which were allegedly concealed fraudulently by private respondent.

On May 31, 1995, petitioner filed with the Court of Appeals (CA) a petition for annulment of the trial court's order approving their agreement on the same ground of alleged fraudulent concealment by private respondent and his misrepresentation of the value of the conjugal assets. The CA dismissed the petition on the ground of forum-shopping. Thereafter, petitioner filed with the CA several motions including Motion to Admit Amended Petition, Motion for Reconsideration, Supplemental Motion for Reconsideration, and Motion for Leave to File Second Amended Petition which were all denied by the appellate court. In denying these motions the CA said that it failed to see any extrinsic fraud that private respondent allegedly concealed the true worth of the family business (Success Unlimited Enterprise). Hence, this petition to determine whether the assailed CA decision is in accordance, with law and the evidence on record.

The petition bears no merit.

With petitioner's "Motion to Amend Agreement dated July 27, 1994 by Inclusion of Other Conjugal Properties" dated 31 January 1995 filed before the trial court, and her petition before the CA for "annulment of the Order and prohibition against the order of the trial court" which approved the same agreement, it is clear that there is forum-shopping. The petition filed before the CA was not an appeal from the order of the trial court approving the agreement, nor a special civil action assailing the same trial court's order. On the contrary, the CA case was filed during the pendency of her motion before the trial court. It should be noted that the latter motion and the petition before the CA pertains to the same subject - amendment of the compromise agreement to include what are alleged to be fraudulently concealed properties, and for declaration of the correct valuations of the said properties. It appears that the said motion has not yet been resolved by the trial court when the CA petition was filed.

Forum-shopping concurs not only when a final judgment in one case will amount to res judicata in another, but also where the elements of *litis pendentia* are present.[1] 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 amounts to forum-shopping.[2] Only when the successive filing of suits as part of an appeal, or a special civil action, will there be no forum-shopping[3] because the party no longer availed of different fora but, rather, sought a review of a lower tribunal's decision or order. The termination of the case before a lower court and its elevation for review to a higher court does not constitute forum-shopping for the latter is a recognized remedy under our procedural rules.

In filing two separate suits, petitioner sought to obtain the same relief in two "friendly" courts, with the end in view of resolving the same issue.[4] Though the case at bar may not be considered under the kind of forum-shopping that will amount to *res judicata*, the same nonetheless falls under *litis pendentia*. For *litis pendentia* to be a ground for dismissal of an action, three elements must concur: (a) identity of parties, or at least such parties who represent the same interest 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. All the three requisites are present herein. The parties are the same; the relief sought in the motion before the trial court and in the petition in the Court of Appeals are the same, that is, inclusion of alleged fraudulently concealed properties; and, both are premised on the same facts which seek an alteration of the terms of the compromise agreement. The judgment of either court will constitute a bar to the other. It has been held that where a litigant sues the same party against whom the same action, or actions, for the alleged violation of the same right, and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the other; and a final judgment in one would constitute *res judicata* and thus, would cause the dismissal of the rest.[5]

With respect to the extrinsic fraud which allegedly concurred when private respondent duped petitioner into signing the compromise agreement, the same involves factual matters and should be properly ascertained in a proceeding for determination of facts. It has been consistently held that the Supreme Court is not a trier of facts.[6] No definitive finding can be made on such matters there being no sufficient evidence on record before the courts to rule on the matter. In order to support the finding of fraud which is a factual issue, it is necessary that the same be supported by evidence properly admitted in accordance with the rules and determined in the first level of judicial proceedings. Besides, if this Court would resolve what petitioner would put as an issue on concealed properties, it would be pre-judging the motion pending before the trial court and render the latter proceeding moot and academic.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

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

[1] *Philippine Woman's Christian Temperance Union, Inc. vs. Abiertas House of Friendship, Inc.*, 292 SCRA 785; *Buan vs. Lopez*, 145 SCRA 34.

[2] *Executive Secretary vs. Gordon*, 298 SCRA 736.

[3] *Santo Tomas University Hospital vs. Surla*, 294 SCRA 382.

[4] *Benguet Electric Cooperative, Inc. vs. Flores*, 287 SCRA 449.

[5] *First Philippine International Bank vs. CA*, 322 Phil. 280.

[6] Blanco vs. Quasha, G.R. No. 133148, November 17, 1999; Moomba Mining vs. CA, G.R. No. 108846, October 26, 1999; Ceremonia vs. CA, G.R. No. 103453, September 21, 1999.

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