

DASMARIÑAS VILLAGE ASSOCIATION, INC., BERNARDO LICHAYTOO, ANTONIO P. TAMBUNTING, EMIL A. ANDRES AND CAPT. JERRY CODILLA, PETITIONERS VS. THE HON. COURT OF APPEALS, THE REGIONAL...

G.R. No. 127276. December 03, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner seeks the reversal of the decision of the Court of Appeals dated May 13, 1996 in CA-G.R. SP No. 39695 dismissing its Petition for Certiorari, Prohibition and Mandamus for lack of merit and its accompanying resolution of November 15, 1996 denying the motion for reconsideration.

Stripped of irrelevant details, the facts are as follows:

Since 1969, private respondent had operated a school within the premises of Dasmariñas Village. However, it was exempted from paying village dues, as embodied in its by-laws. Thereafter, petitioner, which is the residents' association, inquired from private respondent if it was interested in becoming a "special member" with the corresponding responsibility of paying "membership dues," in lieu of the regular dues imposed on the residents. To foster a harmonious relationship, private respondent agreed with the proposal. In 1975, petitioner informed the private respondent that it was increasing its membership dues by twenty-five (25%) percent. Again, private respondent acceded to the increase.

On December 5, 1988, private respondent, to forestall any future increases, proposed that it be assessed as its permanent "membership dues" an amount equivalent to 50% of the village dues collectible from the residents of the village. This proposal was accepted by the petitioner. Thereafter from 1988 to 1991, both the petitioner and the private respondent complied with this agreement.

However, in 1992 petitioner sent private respondent an assessment in the amount of P550,000 with the notation "No Discount for 1992." Surprised, private respondent protested the same and asked that the agreed 50% discount be observed, in accordance with their previous agreement. Private respondent's protestations went unheeded by the petitioner.

To make matters worse for the private respondent, petitioner prohibited access to some of the gates of the village to vehicles bearing private respondent's stickers, thus, causing inconvenience to parents who would fetch their children. Moreover, petitioner implemented a security measure that barred the entry of these vehicles after 6:00 p.m., regardless of individuals who might have to transact business with the private respondent after the said time.

Concerned about the petitioner's actions, private respondents, on June 24, 1994 filed a petition for "Declaratory Relief and Damages with Preliminary Injunction" with the Regional Trial Court of Makati, Branch 39 docketed as Civil Case No. 94-2062,[1] as well as an amended petition[2] for the determination of the proper amount that it should pay as "membership dues" and to enjoin petitioner from implementing its unreasonable security policy.

On September 21, 1994, petitioner filed its motion to dismiss on the ground that private respondent's petition had no legal merit. This motion was favorably granted by the trial court when it ordered the dismissal of private respondent's petition, the dispositive portion of which reads:

"Premises considered, the motion to dismiss is GRANTED and the present petition is hereby DISMISSED.

Without pronouncement as to costs.

SO ORDERED."

Evidently aggrieved with the trial court's order, private respondent, on December 16, 1994, appealed the dismissal of its petition to the Court of Appeals docketed as CA - G.R. CV No. 48733.

While this appeal was still pending for resolution before the appellate court, another incident arose between the petitioner and the private respondent. On September 9, 1995, private respondent was scheduled to conduct review classes preparatory to the National Elementary Achievement Test (NEAT) and National Secondary Aptitude Test (NSAT). However on the morning of the said date, all vehicles going to the campus of the private respondent were denied entry. Worse, petitioner informed these individuals that unless they have the regular DVA sticker, they will be barred from entering the premises of the village throughout the review period.

Alarmed by this development, private respondent, on September 13, 1995, filed another complaint against the petitioner for "injunction and damages" with the Regional Trial Court of Makati, Branch 66 docketed as Civil Case No. 95-1396.[3] On September 25, 1995, petitioner moved for the dismissal of Civil Case No. 95-1396 on the ground that: (a) there is another action involving the same parties for the same cause; and (b) for violation of the anti-forum-shopping rule.

On October 16, 1995, the trial court issued an Order denying petitioner's motion to dismiss Civil Case No. 95-1396, in this tenor:

"WHEREFORE, PREMISES CONSIDERED, the motion to dismiss the petition is hereby DENIED.

The supplemental complaint is hereby ADMITTED.

x x x x x x x x

SO ORDERED."

In view of the trial court's unfavorable ruling of its plea, petitioner elevated its case to the Court of Appeals seeking the review of the trial court's order dated October 16, 1995. However to the dismay of the petitioner, the Court of Appeals dismissed its petition reasoning that no *litis pendentia* exists between Civil Case No. 94-2062 and Civil Case No. 95-1396, viz.:

"A comparison of the parties in the captions of the two cases (Civil Cases Nos. 94-2062 and 95-1396) will readily show that there is no identity of parties.

In Civil Case No. 94-2062, San Agustin College (Makati), Inc. is joined by Colegio San Agustin (Makati) Parents' Association, Inc. and Colegio San Agustin Administrative and Staff Association as parties petitioners. The lone respondent there is Dasmariñas Village Association, Inc.

On the other hand, in Civil Case No. 95-1396, the sole plaintiff is Colegio San Agustin, Inc. while the defendants include Bernardo Lichaytoo, Antonio P. Tambunting, Emil A. Andres, and Capt. Jerry Codilla.

Neither has the second requirement been complied with.

Civil Case No. 94-2062 is for 'Declaratory Relief and Damages with Preliminary Injunction' (Annexes 'A';

'B'), while Civil Case No. 95-1396 is for 'Injunction and Damages with Preliminary Injunction.' (Annes 'I').

While it may be conceded that both cases include a claim for damages and the remedy of injunction, still the cause of action in Civil Case No. 94-2062 relative to the proper amount that Colegio San Agustin should pay by way of membership dues - which represents a substantial sum - is absent in Civil Case No. 95-1396."

Consequently, corollarily to the foregoing, the dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing, the instant Petition for Certiorari, Prohibition and Mandamus is hereby DENIED DUE COURSE and is ordered DISMISSED for lack of merit.

SO ORDERED."

Not satisfied with the Court of Appeals' ruling, petitioner has filed the instant petition raising the decisive issue of whether Civil Case No. 95-1396 should be barred by Civil Case No. 94-2062 on the ground of *litis pendentia*.

For the sake of clarity, certain doctrines must be reviewed regarding the principle of *litis pendentia*. If a party-litigant splits his single cause of action, the other action or actions filed may be dismissed by invoking *litis pendentia*, pursuant to Sec. 1(e), Rule 16 of the 1997 Rules of Civil Procedure. This is in relation to Section 4, Rule 2, which provides for the cause and effect of this practice.

"SEC. 4. Splitting a single cause of action; effect of. - If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others."

As a general rule, therefore, the second case filed should be abated under the priority and time rule,[4] for this is a declaration of public policy against multiplicity of suits.[5]

That having been said, jurisprudence has provided that for *litis pendentia* to exist, the following requisites must be present:

1. Identity of parties, or at least such parties as those representing the same interests in both actions;
2. Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts;
3. Identity with respect to the two preceding particulars in the two cases, 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.[6]

With these guidelines as parameters, it is necessary to review the initiatory pleadings filed by the private respondent in Civil Case No. 94-2062 and Civil Case No. 95-1396.[7]

As regards the first requirement, it is evident that both actions involved the same parties. In Civil Case No. 94-2062, the plaintiffs are San Agustin College Inc., Colegio San Agustin Parents' Association and Colegio San Agustin Administrative Staff Association and the defendant is Dasmariñas Village Association, Inc. In Civil Case No. 95-1396, the plaintiff is Colegio San Agustin Inc. and the defendants are Dasmariñas Village Inc., Bernardo Lichaytoo, Antonio Tambunting, Emil Andres and Capt. Jerry Codilla. This notwithstanding, the addition or elimination of parties do not alter the situation.[8]

However, the other two elements are not present. In Civil Case No. 94-2062, private respondent assailed petitioner's arbitrary act of increasing its membership fees beyond the prescribed rate, as well as prohibiting access to some of the gates of the village without bearing petitioner's sticker.[9] Private respondent argued that petitioner could not have unilaterally proceeded with these measures without violating their various agreements

entered into from 1969 to 1989.[10] Thus, private respondent sought to enjoin petitioner from enforcing or increasing its membership dues and asked that vehicles with private respondent's sticker be accorded the same schedule prescribed for residents of the village.

On the other hand, Civil Case No. 95-1396 concerns the incident that occurred on September 9, 1995, wherein the petitioner unreasonably denied the entry of vehicles without DVA stickers to private respondent's campus to participate in the on-going review classes,[11] despite the fact that petitioner had previously approved, on August 28, 1995, the request of private respondent to allow the participants unhampered vehicular movement during the review dates of September 9, 19 and 22, 1995.[12]

Moreover, Civil Case No. 94-2062 was founded upon alleged violations by petitioner of its agreement with private respondent regarding membership dues and car stickers. On the other hand, the issue in Civil Case No. 95-1396 was the prejudice suffered by the private respondent due to petitioner's unwarranted refusal to allow the participants in the review classes entry into the village without DVA stickers, in spite of the prior approval by the petitioner. Clearly, the two cases arose from different acts and causes of action. At the risk of being repetitious, the crux of Civil Case No. 94-2062 was the alleged failure of petitioner to abide by the stipulations of its agreement with private respondent regarding the terms and conditions of the latter's status as a "special member" of the village, while Civil Case No. 95-1396 pertains to the damages suffered by private respondent in 1995 due to petitioner's refusal to grant entry to reviewee participants in the former's campus.

The third element is likewise absent, because a judgment in Civil Case No. 94-2062 will not amount to res judicata in Civil Case No. 95-1396 and vice versa. The outcome of Civil Case No. 94-2062, which pertains to the petitioner's alleged violation of its agreement with the private respondent in 1989, has nothing to do with Civil Case No. 95-1396 since the issue here is whether petitioner should be held liable for damages inflicted upon the private respondent as a result of the violation of their agreement of August 28, 1995.

With respect to the allegation of petitioner that private respondent is guilty of forum-shopping, the established rule is that for forum-shopping to exist, both actions must involve the same transactions; same essential facts and circumstances and must raise identical causes of action, subject matter and issues.[13] In this regard, forum-shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to res judicata in the other.[14]

Accordingly, the requisites of *litis pendentia* not having concurred, private respondent cannot be held guilty of forum shopping.[15]

Finally, we note that this petition stems from an order denying petitioner's motion to dismiss Civil Case No. 95-1396. Time and again, we have held that a denial of a motion to dismiss is merely an interlocutory order which, in the absence of abuse of discretion, cannot be a basis for certiorari. We have had occasion to rule that:

"We find occasion here to state the rule, once more, that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be subject of a petition for review on certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment." [16]

Petitioner having failed to show that the trial court's action is tainted with grave abuse of discretion, it is thus apparent that its petition for certiorari cannot prosper.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED for lack of merit and the Court of Appeals decision in CA-G.R. SP No. 39695 dated May 13, 1996 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Kapunan, Purisima, and Pardo, JJ., concur.

[1] Rollo, pp. 60-75.

[2] Ibid., pp. 89-105.

[3] Id., pp. 119-126.

[4] National Power Corporation v. Court of Appeals, 279 SCRA 506 (1997).

[5] Investors Finance Corp. v. Ebarce, 163 SCRA 60 (1988).

[6] Casil v. Court of Appeals, G.R. No. 121534, January 28, 1998; Cokaliong Shipping Lines, Inc. v. Amin, 260 SCRA 122 (1996); Atienza v. Court of Appeals, 232 SCRA 594 (1994).

[7] Rollo, pp. 89-104, 119-125.

[8] Sanpiro Finance Corp. v. IAC, 220 SCRA 527 (1993).

[9] Petition, Rollo, pp. 98-99.

[10] Ibid., pp. 90-92.

[11] Id., pp. 121-122.

[12] Id., pp. 130-131.

[13] International Container Terminal Services, Inc. v. Court of Appeals, 249 SCRA 389 (1995).

[14] Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc. & Radiance School, Inc., G.R. No. 125571, July 22, 1998.

[15] Marina Properties Corp. v. Court of Appeals, G.R. No. 125447, August 14, 1998.

[16] España Sr. v. Court of Appeals, 268 SCRA 511 (1997).

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