

**CONCEPCION V. VDA. DE DAFFON, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, LOURDES OSMEÑA VDA. DE
DAFFON, AILEEN DAFFON, JOSELITO DAFFON, JR., ANA VANESA
DAFFON, LEILA DAFFON...**

G.R. No. 129017. August 20, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner Concepcion Villamor was married to the late Amado Daffon, with whom she begot one son, Joselito Daffon. Joselito married Lourdes Osmeña, and they bore six children, namely, Aileen, Joselito Jr., Ana Vanesa, Leila, Julius and Suzette.

Amado passed away on January 21, 1982. His son, Joselito, died on October 25, 1990.

On January 21, 1994, respondents Lourdes Osmeña Vda. De Daffon, together with her six minor children, instituted an action for partition against petitioner Concepcion Villamor Vda. de Daffon, which case was docketed as Civil Case No. DNA-281 of the Regional Trial Court of Danao City, Branch 25.[1] Respondents alleged that Amado left several real and personal properties which formed part of his conjugal partnership with petitioner. Joselito being a forced heir of Amado was entitled to at least one half of Amado's estate, consisting of his share in the said conjugal properties. However, the said properties were never partitioned between petitioner and Joselito. After Joselito's death, petitioner's behavior towards respondents, her daughter-in-law and grandchildren, changed. She claimed absolute ownership over all the properties and deprived them of the fruits thereof. Thus, respondents prayed that the conjugal properties of Amado Daffon and petitioner be partitioned and that the one-half share of Amado be further partitioned between petitioner, on one hand, and the respondents as heirs of Joselito Daffon, on the other hand.

Petitioner filed a Motion to Dismiss on the grounds of (1) lack of jurisdiction over the subject matter of the case; (2) failure of the complaint to state a cause of action; and (3) waiver, abandonment and extinguishment of the obligation.[2] She argued that the trial court cannot take cognizance of the action for partition considering her claim of absolute ownership over the properties; and that respondents themselves admitted that petitioner has repudiated the co-ownership. Anent the third ground, petitioner alleged that Joselito Daffon filed a complaint against Milagros Marin, who was likewise married to Amado Daffon, for recovery of a parcel of land in Mandaluyong.[3] In said complaint, respondent Lourdes Osmeña Vda. de Daffon allegedly admitted that the land sought was the only property of the late Amado Daffon.

In an Order dated July 22, 1994, the trial court denied the Motion to Dismiss.[4] Petitioner filed a motion for reconsideration which was also denied on September 23, 1994.[5]

On October 25, 1994, petitioner filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 35536. On November 14, 1996, the Court of Appeals rendered the assailed decision denying due course and

dismissing the petition for certiorari.[6] Petitioner's motion for reconsideration was denied in the Resolution dated April 21, 1997.[7]

The case is now before us on petition for review, based on the following issues:

I

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PRIVATE RESPONDENTS NEED NOT BE ACKNOWLEDGED AS HEIRS OF THE DECEASED AMADO DAFFON.

II

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT IT IS NOT NECESSARY THAT PRIVATE RESPONDENTS BE THE REGISTERED OWNERS OF THE PROPERTIES CLAIMED IN THE ACTION FOR PARTITION.

III

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE TRIAL COURT IS NOT REQUIRED TO TAKE JUDICIAL NOTICE OF ANOTHER CASE PENDING IN ANOTHER COURT.

IV

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE TRIAL COURT'S DENIAL OF PETITIONER'S MOTION TO DISMISS THE COMPLAINT BASED ON FAILURE TO STATE A CAUSE OF ACTION IS REVIEWABLE BY THE SPECIAL CIVIL ACTION OF CERTIORARI.[8]

There is no merit in the petition.

It should be stressed that in the determination of whether a complaint fails to state a cause of action, only the statements in the complaint may be properly considered.[9] Moreover, a defendant who moves to dismiss the complaint on the ground of lack of cause of action hypothetically admits all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.[10]

In the case at bar, the complaint sufficiently alleged that "defendant (i.e., petitioner herein) was married to Amado Quiros Daffon" and that "they begot an only son in Joselito Daffon." [11] The complaint further alleged that "Joselito Daffon later got married to herein plaintiff Lourdes Osmeña and before the former died on October 25, 1990 he sired the six (6) children who are now plaintiffs with their mother." [12] This, to our mind, was sufficient allegation that Joselito Daffon was a legitimate son of the spouses Amado and Concepcion Daffon; and that plaintiffs (i.e., respondents herein) were likewise legitimate heirs of Joselito Daffon. Admitting the truth of these averments, there was, therefore, no need to inquire whether respondent minor children were duly acknowledged by the deceased Amado Daffon. To be sure, the illegitimacy of the said children and the lack of acknowledgment are matters which petitioner may raise as a defense in her answer and threshed out by the court during a full-blown trial.

In the same vein, there is no need for the complaint to specifically allege respondents' claim of co-ownership of the properties. The complaint needs only to allege the ultimate facts on which the plaintiffs rely for their claim.[13]

The rules of procedure require that the complaint must make a concise statement of the ultimate facts or the essential facts constituting the plaintiff's cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action inadequate. A complaint states a cause of action only when it has its three indispensable elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[14]

The allegations contained therein are sufficient to establish respondents' right to the estate of Amado Daffon. By stating their relationship to the deceased, they established their line of succession as the basis for their claim. Their rights to succeed as heirs were transmitted from the moment of death of the decedent.[15]

Contrary to petitioner's contention, the fact that she repudiated the co-ownership between her and respondents did not deprive the trial court of jurisdiction to take cognizance of the action for partition. In a complaint for partition, the plaintiff seeks, first, a declaration that he is a co-owner of the subject properties; and second, the conveyance of his lawful shares.[16] As the Court of Appeals correctly held, an action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved. If the defendant asserts exclusive title over the property, the action for partition should not be dismissed. Rather, the court should resolve the case and if the plaintiff is unable to sustain his claimed status as a co-owner, the court should dismiss the action, not because the wrong remedy was availed of, but because no basis exists for requiring the defendant to submit to partition. If, on the other hand, the court after trial should find the existence of co-ownership among the parties, the court may and should order the partition of the properties in the same action.[17]

An action for partition is comprised of two phases: first, an order for partition which determines whether a co-ownership in fact exists, and whether partition is proper; and, second, a decision confirming the sketch or subdivision submitted by the parties or the commissioners appointed by the court, as the case may be. The first phase of a partition and/or accounting suit is taken up with the determination of whether or not a co-ownership in fact exists, (i.e., not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property. This phase may end with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited. It may end, upon the other hand, with an adjudgment that a co-ownership does in truth exist, partition is proper in the premises and an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon.[18]

Petitioner insists that in her testimony given in Civil Case No. 56336, respondent Lourdes Daffon admitted that the land in Mandaluyong was the only property left by the deceased Amado Daffon. The pertinent portion of her testimony runs this way:

Q And because of that incident being the surviving spouse of Joselito Daffon, how did it affect you personally and also your husband at that time when he was still alive?

A She (sic) felt sad and she (sic) suffered mental torture, mental anxiety and numerous sleepless nights for that is the only property left to us by my father-in-law and his son and his grandchildren.[19]

We do not agree with petitioner's interpretation of the above phrase. The foregoing statement, saying that the deceased only left the said Mandaluyong property to his son Joselito, does not exclude the possibility that Amado owned other land and personal belongings during his lifetime, which he may not have left to his son. This does not deprive Joselito or his successors-in-interest of the right to share in those other properties. As a matter of fact, respondents' complaint contains a long list of properties allegedly owned by Amado Daffon.[20] Again, the resolution of whether or not these belonged to Amado Daffon and formed part of his estate is a matter best taken up during trial and after an evaluation of the evidence to be presented by the contending parties.

Petitioner argues that the order which denied the Motion to Dismiss is an interlocutory order which is not appealable. Hence, it may be the subject of a special civil action for certiorari. However, for certiorari to lie, it must be convincingly proved that the lower court committed grave abuse of discretion, or an act too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law; or that the trial court exercised its power in an arbitrary and despotic manner by reason of passion and personal hostility.[21] In the case at bar, the trial court did not commit grave abuse of discretion in denying petitioner's Motion to Dismiss. Thus, the Court of Appeals was correct in dismissing the petition for certiorari.

We are indeed distressed by the circumstances under which the instant case reached this Court. Instead of filing an answer and meeting the issues head-on, petitioner and her counsel chose to elevate the incident of the denial of the Motion to Dismiss to the higher courts. In doing so, they effectively delayed the resolution of the case and the adjudication of the respective rights of the parties by the court below. What makes this case more reprehensible is that petitioner abused the legal process to delay her own grandchildren's expectancy to share in the estate left by their father and grandfather. If there is any merit in her claim of absolute ownership over the contested properties, she could have just allowed the case to be fully tried, during which she should have proved her case with competent proof. While litigants may utilize all available means to defend themselves, the legal strategies they employ should not amount to machinations which frustrate and prejudice the rights of others. Moreover, frivolous appeals, such as the one filed in this case, are not countenanced in this jurisdiction.

WHEREFORE, in view of the foregoing, the instant petition is DENIED. The decision of the Court of Appeals in CA-G.R. SP No. 35536 is AFFIRMED.

SO ORDERED.

Vitug, and Austria-Martinez, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Record, pp. 28-32.

[2] Ibid., pp. 33-38.

[3] Docketed as Civil Case No. 56336 of the Regional Trial Court of Pasig, Branch 160.

[4] Record, pp. 25-26; penned by Judge Jose P. Soberano, Jr.

[5] Ibid., p. 27.

[6] Ibid., pp. 68-77; penned by Associate Justice Fermin A. Martin, Jr.; concurred in by Presiding Justice Nathanael P. De Pano, Jr. and Associate Justice Conchita Carpio Morales.

[7] Ibid., pp. 97-98.

[8] Rollo, pp. 16-17.

[9] Government Service Insurance System v. Court of Appeals, G.R. No. 128118, February 15, 2002.

[10] Ceroferre Realty Corporation v. Court of Appeals, G.R. No. 139539, February 5, 2002.

- [11] Complaint, par. II-a.
- [12] Ibid., par. II-b.
- [13] 1997 Rules of Civil Procedure, Rule 8, Section 1.
- [14] Uy v. Hon. Evangelista, G.R. No. 140365, July 11, 2001.
- [15] Emnace v. Court of Appeals, G.R. No. 126334, November 23, 2001.
- [16] Mallilin, Jr. v. Castillo, 333 SCRA 628, 640 2000.
- [17] Citing Roque v. Intermediate Appellate Court, 165 SCRA 118, 125-126 1998.
- [18] Maglucot-Aw v. Maglucot, 329 SCRA 78, 89-90 2000.
- [19] Civil Case No. 56336; TSN, December 21, 1990, p. 19; underscoring ours.
- [20] Complaint, par. IV, pp. 2-4; Record, pp. 28-30.
- [21] Lim v. Hon. Executive Secretary, G.R. No. 151445, April 11, 2002.

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