

ULPIANO BALO, LYDIA BALO-LUMPAS, EUGENIO BALO, ULPIANO BALO, JR., NIDA BALO-MORALETA, NORA BALO-CATANO, ZAIDA BALO, JUDITH BALO-MANDREZA, DANILO BALO AND RONILO BALO, P E T I T ...*G.R. NO. 129704. September 30, 2005*

Ponente: CHICO-NAZARIO, J.

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A complaint for Judicial Partition of Real Properties and Accounting with Damages, docketed as Civil Case No. 279, was filed by private respondent Josefina Garrido against petitioners Ulpiano Balo, Lydia Balo-Lumpas, Eugenio Balo, Ulpiano Balo, Jr., Nida Balo-Moraleta, Nora Balo-Catano, Zaida Balo, Judith Balo-Mandreza, Danilo Balo and Ronilo Balo, before the Regional Trial Court (RTC) of Abuyog, Leyte, Branch 10, alleging that she (private respondent) and petitioners are the co-owners of undivided parcels of land located at Mayorga, Leyte. According to her, these lands were originally owned by the spouses Eugenio Balo, Sr. and Ma. Pasagui-Balo, who, at the time of the filing of the complaint, were already deceased. The Balo spouses were survived by their two (2) children, Ulpiano, Sr. and Maximino, the latter likewise deceased. Private respondent is the daughter of Maximino Balo and Salvacion Sabulao. Petitioner Ulpiano Balo is the son of Eugenio Balo, Sr., while the other petitioners, the children of Ulpiano, are Eugenio's grandchildren.

Private respondent further alleged in her complaint that immediately upon the death of her grandfather, Eugenio Sr., the petitioners took possession of the said real properties without her knowledge and consent. The petitioners being her uncle and cousins, private respondent earnestly requested them that they come up with a fair and equal partition of the properties left by her grandparents. The petitioners having outrightly refused her proposal, private respondent filed the complaint.[1]

In lieu of an Answer, petitioners filed a Motion to Dismiss[2] on the following grounds:

- Failure to state a cause of action - plaintiff, though she claims to be a daughter of Maximino who died sometime in 1946, failed to allege whether or not she is a legitimate child. Plaintiff's failure to allege legitimacy is fatal considering the provision of Article 992 of the Civil Code.[3] To allow Plaintiff to inherit from the estate of the spouses Eugenio and Maria Balo in representation of her father Maximino Balo would be to permit intestate succession by an illegitimate child from the legitimate parent of his father, assuming that she is the child of Maximino Balo.
- The complaint does not show that the estate of the spouses Eugenio and Maria Balo have been settled and its obligations have been paid.
- The properties enumerated in the Complaint were proceeded against by way of execution to satisfy a judgment against Eugenio and Maria Balo. Subsequently, defendant Ulpiano repurchased the said properties and has been, together with his children, openly, exclusively and adversely in possession of the real estate properties in question.

Private respondent filed her comment/opposition to the motion to dismiss.[4]

In an Order dated 12 September 1996, the RTC denied the motion to dismiss for lack of merit.[5] The trial court held:

The complaint clearly states that the late Eugenio Balo, Sr., and Maria Pasagui Balo had two (2) children, namely: Ulpiano, Sr. and Maximino. The plaintiff is the daughter of the late Maximino Balo and Salvacion Sabulao; while the defendants are children of the late Ulpiano Balo, Sr. and Felicidad Superio.

The complaint enumerates/annexes 13 tax declarations in the name of Eugenio Balo, Sr. marked as Annexes "A" to "M." The plaintiff as an heir prays that these parcels of land be partitioned in accordance with Article 982 of the Civil Code which states:

"The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

No evidence may be alleged or considered to test the sufficiency of the complaint except the very facts pleaded therein. It would be improper to inject into the allegation, facts not alleged and use them as basis for the decision on the motion.

The Court is not permitted to go beyond and outside of the allegations in the complaint for data or facts.

Therefore, the allegation of illegitimacy and claim of absolute ownership are modifications and unreasonable inferences. If there is doubt to the truth of the facts averred in the complaint, the Court does not dismiss the complaint but requires an answer and proceeds to hear the case on the merit.[6]

Petitioners filed a Motion for Reconsideration[7] which the RTC denied in its Order[8] dated 07 November 1996.

Petitioners filed a Petition for Certiorari[9] before the Court of Appeals. After the filing of Comment and other pleadings, the case was deemed submitted for decision. In a resolution dated 16 April 1997, the Court of Appeals denied due course to the petition and accordingly dismissed the same. The Court of Appeals justified the dismissal in the following manner:

It is an established rule that an order denying a motion to dismiss is basically interlocutory in character and cannot be the proper subject of a petition for certiorari. When a motion to dismiss is denied, the proper procedure is to proceed with the trial and if the decision be adverse to the movant, the remedy is to take an appeal from said decision, assigning as one of the errors therefore the denial of the motion to dismiss.[10]

Petitioners filed a Motion for Reconsideration[11] which the Court of Appeals denied in a resolution dated 30 June 1997.[12] Hence this petition for review[13] under Rule 45 of the Rules of Court.

Petitioners cite the following grounds for the allowance of their petition, to wit:

I

WHETHER OR NOT THE FAILURE TO ALLEGE THE NATURE AND EXTENT OF PLAINTIFF'S TITLE IN A PETITION FOR PARTITION IS FATAL TO ITS CAUSE OF ACTION.

II

WHETHER OR NOT THE ACTION FOR JUDICIAL PARTITION AND ACCOUNTING HAS PRESCRIBED, WAS WAIVED, OR WAS OTHERWISE ABANDONED.[14]

At the threshold of the instant petition for review is the correctness of the appellate court's dismissal of the petition for certiorari filed by the petitioners.

In resolving to deny the petition, the Court of Appeals relied on the long established jurisprudence that an order denying a motion to dismiss is interlocutory and cannot be the proper subject of a petition for certiorari.

The general rule regarding denial of a motion to dismiss as a basis of a resort to the extraordinary writ of certiorari is that:

. . . [A]n order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.

To justify the grant of the extraordinary remedy of certiorari, therefore, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. By "grave abuse of discretion" is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[15]

Specific instances whereby the rule admits certain exceptions are provided as follows:

. . . Under certain situations, recourse to certiorari or mandamus is considered appropriate, i.e., (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case.[16]

Applying the foregoing, the Court of Appeals should not have dismissed the petition outright as the same alleges grave abuse of discretion. Instead, it should have proceeded to determine whether or not the trial court did commit grave abuse of discretion as alleged by the petitioners. The Court of Appeals having failed in this regard, it behooves upon this Court to discuss the merits of the petition to put to rest the issues raised by the petitioners.

Contrary to petitioners' contention, allegations sufficient to support a cause of action for partition may be found in private respondent's complaint.[17]

Nothing is more settled than the rule that in a motion to dismiss for failure to state a cause of action, the inquiry is into the sufficiency, not the veracity, of the material allegations.[18] Moreover, the inquiry is confined to the four corners of the complaint, and no other.[19]

In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint.

The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. (Garcon vs. Redemptorist Fathers, 17 SCRA 341)

If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits. (Galeon vs. Galeon, 49 SCRA 516-521)[20]

Section 1, Rule 8 of the 1997 Rules of Civil Procedure provides that the complaint needs only to allege the

ultimate facts upon which private respondent bases her claim.

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 violate 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.[21]

In her Complaint, the private respondent made the following assertions:

. . . That the afore-described parcels of lands were originally owned by Eugenio Balo, Sr. and Ma. Pasagui-Balo, who are now both deceased and after their death, were inherited into two (2) equal shares by their two (2) children, namely: Ulpiano, Sr. and Maximino, both surnamed Balo, the later (sic) being already dead.

That plaintiff is the daughter of the late Maximino Balo and Salvacion Sabulao, who after her father's death, had inherited her father's share of the inheritance.

That defendant Ulpiano Balo, Sr. aside from being the son of Eugenio Balo, Sr., is married to Felicidad Superio, and is the father of all the other defendants in this case.

The defendants took possession of the above-described real properties immediately after the death of plaintiff's grandfather Eugenio Balo, Sr. without her knowledge and consent.

That plaintiff is desirous that the above-described real properties be partitioned between her and defendants.

That plaintiff has proposed to the defendants that the above-described real properties be amicably partitioned between them by mutual agreement in a very fair and practical division of the same, but said defendants refused and continue to do so without any justifiable cause or reason to accede to the partition of the said properties.[22]

The foregoing allegations show substantial compliance with the formal and substantial requirements of a Complaint for Partition as required under Section 1, Rule 69 of the 1997 Rules of Civil Procedure.[23]

On the insistence of petitioners that private respondent first prove her legitimacy before an action for partition may be maintained, this Court, in the case of *Briz v. Briz*, [24] pronounced that proof of legal acknowledgment is not a prerequisite before an action for partition may be filed. We said: [25]

. . . In other words, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. Certainly, there is nothing so peculiar to the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases. For instance, if the plaintiff had in this action impleaded all of the persons who would be necessary parties defendant to an action to compel acknowledgement, and had asked for relief of that character, it would have been permissible for the court to make the judicial pronouncement declaring that the plaintiff is entitled to be recognized as the natural child of Maximo Briz, and at the same time to grant the additional relief sought in this case against the present defendants; that is, a decree compelling them to surrender to the plaintiff the parcel of land sued for and to pay her the damages awarded in the appealed decision.

The conclusion above stated, though not heretofore explicitly formulated by this court, is undoubtedly to some extent supported by our prior decisions. Thus, we have held in numerous cases, and the doctrine must be

considered well settled, that a natural child having a right to compel acknowledgment, but who has not been in fact legally acknowledged, may maintain partition (proceedings for the division of the inheritance against his coheirs (*Siguiong vs. Siguiong*, 8 Phil. 5; *Tiamson vs. Tiamson*, 32 Phil 62); and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother (*Capistrano vs. Fabella*, 8 Phil. 135; *Conde vs. Abaya*, 13 Phil. 249; *Ramirez vs. Gmur*, 42 Phil 855). In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings.

To further reiterate that in partition proceedings, dismissal prior to answer is premature, this Court has held:

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. 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 determine 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.[26]

The case of *Vda. De Daffon v. Court of Appeals*[27] is almost most appropriate. In said case, the action for partition filed by the plaintiffs was met by a motion to dismiss filed by the defendants based on the grounds of failure of the complaint to state a cause of action, waiver, abandonment and extinguishment of the obligation. The trial court denied the motion to dismiss and the denial was affirmed by the appellate court and by this Court. We held there that the trial court and the Court of Appeals were correct in dismissing the petition for certiorari absent a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction. We further expressed our dismay over the delay in the resolution of the said case due to the fact that the issue of the denial of the Motion to Dismiss was elevated to this Court by petitioner and counsel instead of just filing an Answer and meeting the issues head-on.

On the matter of prescription cited by the petitioners as a ground for the dismissal of the complaint, it is noteworthy that the motion to dismiss filed by the petitioners did not ipso facto establish prescription. An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed;[28] otherwise, the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits and cannot be determined in a mere motion to dismiss.[29]

Wherefore, premises considered, the instant Petition is DENIED and the decision of the Court of Appeals in CA-G.R. SP No. 42803, affirming the Order of the Regional Trial Court dated 12 September 1996, is AffIRmed. This case is ordered remanded to the court of origin which is directed to resolve the case with dispatch. Costs against petitioners.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 41-46.

[2] Rollo, pp. 60-62.

- [3] Article 992. An illegitimate child has no right to inherit ab intestato from the legitimate children or relatives of his father or mother.
- [4] Rollo, p. 64.
- [5] Rollo, pp. 72-74.
- [6] Rollo, pp. 73-74.
- [7] Rollo, pp. 75-77.
- [8] Rollo, p. 78.
- [9] CA-G.R. SP No. 42803; Rollo, p. 105.
- [10] Rollo, p. 24.
- [11] Rollo, p. 159.
- [12] Rollo, p. 104.
- [13] Rollo, pp. 11-22.
- [14] Rollo, p. 235.
- [15] Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation, 23 September 2005, pp. 12-13.
- [16] Bank of America NT & SA v. Court of Appeals, G.R. No. 120135, 31 March 2003, 400 SCRA 156, 166.
- [17] Ocampo v. Ocampo, et al., G.R. No. 150707, 14 April 2004, 427 SCRA 545.
- [18] Ventura v. Bernabe, G.R. No. L-26760, 30 April 1971, 38 SCRA 587, cited in Dabuco v. Court of Appeals, G.R. No. 133775, 20 January 2000, 322 SCRA 853.
- [19] Acuna v. Batac Producers Cooperative Marketing Association, Inc., G.R. No. L-20333, 30 June 1967, 20 SCRA 526.
- [20] Paredes v. Intermediate Appellate Court, G.R. No. 70717, 08 May 1990, 185 SCRA 134, 138-139.
- [21] See Nadela v. City of Cebu, G.R. No. 149627, 18 September 2003, 411 SCRA 315.
- [22] Rollo, pp. 43-44.
- [23] Rule 69, Section 1. Complaint in action for Partition of real estate. A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his Complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property. Heirs of Bartolome Infante v. Court of Appeals, G.R. No. L-77202, 22 June 1988, 162 SCRA 431.
- [24] 43 Phil. 763, 768-769 (1922).
- [25] Cited in Tayag v. Court of Appeals, G.R. No. 95229, 09 June 1992, 209 SCRA 605.
- [26] See Roque v. Intermediate Appellate Court, G.R. No. L-75886, 30 August 1988, 165 SCRA 118.
- [27] Penned by Associate Justice Consuelo Ynares-Santiago with Associate Justices Jose C. Vitug and Alicia Austria-Martinez, concurring. G.R. No. 129017, 20 August 2002, 387 SCRA 427.

[28] National Irrigation Administration v. Court of Appeals, G.R. No. 129169, 17 November 1999, 318 SCRA 255; Francisco v. Robles, 94 Phil. 1035 (1954).

[29] Marquez v. Baldoz, G.R. No. 143779, 04 April 2003, 400 SCRA 669.

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