

**GLICERIO R. BRIOSO, SUBSTITUTED BY FELICIDAD Z. BRIOSO,
BENER Z. BRIOSO, JULITO Z. BRIOSO, GLICERIO Z. BRIOSO, JR., AND
ERNESTO Z. BRIOSO, CONCEPCION B. NOLASCO, MARCOS NOLASCO**

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G.R. No. 132765. January 31, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review on certiorari[1] seeks to reverse the Decision[2] of the Court of Appeals dated September 2, 1997 in CA-G.R. CV No. 51347, as well as the Resolution dated January 21, 1998 denying the motion for reconsideration. The Court of Appeals in its assailed Decision affirmed the Decision[3] of the Regional Trial Court, Branch 29, Libmanan, Camarines Sur. The trial court ordered petitioners to turn over possession of certain properties to respondents and to pay respondents damages and attorney's fees.

The Facts

On February 1, 1975, the Spouses Salvadora Rili-Mariano and Leonardo C. Mariano ("Spouses Mariano" for brevity), through the Land Bank of the Philippines ("Land Bank" for brevity), repurchased the property that they previously sold to Glicerio Brioso ("Glicerio" for brevity) within the period specified in the parties' pacto de retro sale. Despite repeated demands, however, Glicerio refused to deliver the entire property to the Spouses Mariano. Thus, on May 27, 1977, the Spouses Mariano filed a complaint[4] for recovery of possession of real property against Glicerio, Ernesto Brioso ("Ernesto" for brevity), Concepcion Brioso-Nolasco ("Concepcion" for brevity), Eusebio Nosedal ("Eusebio" for brevity) and Salvador Brioso ("Salvador" for brevity). The Spouses Mariano sought to repossess Lots 715, 716, 718, 722, 724 and 725 ("Properties" for brevity), which constitute portions of a riceland containing an area of 19.5229 hectares and situated at Potot, Libmanan, Camarines Sur.

Defendants, through their counsels, Augusto Pardalis ("Atty. Pardalis" for brevity) and Salvador, asserted that the Spouses Mariano had no cause of action against Glicerio because the latter had already lost all interest in the land. Defendants claimed that Glicerio installed his son Ernesto, his daughter Concepcion and his employee Eusebio as tenants of the property before the repurchase, therefore, they were bona fide cultivators-possessors of the land. Defendants also averred that the titles to the Properties had already been transferred to the Land Bank. Defendants added that the complaint was defective as it failed to implead Land Bank and Concepcion's husband as indispensable parties. As part of their counterclaim, defendants alleged that the Spouses Mariano failed to comply with their obligation to replace the Land Bank bonds (which Spouses Mariano used to partly pay the repurchase price) with cash.

Subsequently, Spouses Mariano amended their complaint to implead Land Bank and Concepcion's spouse,

Marcos Nolasco (“Marcos” for brevity).[5]

During the pre-trial, upon the Spouses Mariano’s motion, the complaint was dismissed against Land Bank, Ernesto and Eusebio.[6] Thereafter, trial against the remaining defendants, namely, Glicerio, Concepcion, Marcos and Salvador, ensued.

On August 30, 1987, Glicerio died. Accordingly, defendants, through Atty. Pardalis, filed a Notice of Death of Glicerio Brioso.[7] Subsequently, the Spouses Mariano’s counsel filed a Motion for Substitution of Deceased Defendant[8] which Atty. Pardalis received. Acting on the motion for substitution, the trial court issued an Order[9] which reads:

“The motion of Atty. Grageda to substitute the deceased defendant Glicerio Brioso is hereby admitted.

SO ORDERED.”

Trial on the merits continued. Accordingly, defendants adduced their evidence. Part of defendants’ evidence consisted of the testimonies of Salvador, Concepcion and Ernesto.[10]

On July 14, 1995, the trial court rendered a decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, after proper evaluation of the evidence presented by both parties, this Court finds and holds that the preponderance of evidence is in favor of the plaintiffs. Hence, judgment is rendered in favor of the plaintiffs and against the defendants Concepcion Brioso-Nolasco and her husband,[11] Salvador Brioso and the substitute defendants for deceased defendant Glicerio Brioso who are ordered to pay the plaintiffs, jointly and severally, in the proportion stated earlier:

a)

P303,972.46, for actual damages;

b)

P147,000.00 for transportation, hotel and representation expenses;

c)

P95,000.00 for income loss from employment and business activities;

d)

P20,000.00 for attorney’s fees;

e)

P150,000.00 for moral damages;

f)

P50,000.00 for exemplary damages; and

g)

to pay the cost.

All these amounts shall earn interest at 6% per annum until fully paid by the defendants.

The defendants are also directed to immediately turn over the physical and material possession of Lots 716, 722 and 725 to the plaintiffs as reflected in Exh. D.

SO ORDERED.”[12]

Dissatisfied with the adverse decision, Marcos and Glicerio’s heirs, namely, Felicidad Z. Brioso (“Felicidad” for brevity), Bener Z. Brioso (“Bener” for brevity), Julito Z. Brioso (“Julito” for brevity), Glicerio Z. Brioso, Jr. (“Glicerio, Jr.” for brevity), Ernesto, Concepcion and Salvador filed an appeal with the Court of Appeals.

In the Court of Appeals, petitioners presented, among others, the issue of whether there was a valid substitution of the deceased party, the main issue presented in the instant petition. Petitioners maintained that the substitution of Glicerio was invalid as the trial court failed to comply with the Rules of Court on the substitution of a deceased party. Considering that the substitution was null and void, petitioners alleged that the trial court did not acquire jurisdiction over their persons. Hence, the entire proceedings in the trial court and the judgment rendered by the trial court were void.

The Ruling of the Court of Appeals

The Court of Appeals sustained the decision of the trial court. In ruling that there was a valid substitution of the deceased party, the Court of Appeals quoted Section 17, Rule 3 of the old Rules of Court. The Court of Appeals held that the trial court acquired jurisdiction over the persons of the petitioners. Thus, the decision of the trial court is valid and binding upon all of the petitioners. The Court of Appeals anchored its ruling on the following factual findings:

“In this case, the records show that on September 23, 1987, Atty. Augusto Pardales(sic), counsel for defendants, filed a notice of death informing the court that defendant Glicerio R. Brioso died on August 30, 1987 (p. 316, Records). Counsel for the plaintiffs accordingly filed a Motion for Substitution of Deceased Defendant on October 5, 1987 (p. 318, Records). The trial court on October 8, 1987 issued an Order which reads:

xxx

Subsequently, the heirs of Glicerio Brioso, namely: Mrs. Felicidad Z. Brioso, Benet(sic) Z. Brioso, Julito Z. Brioso, Glicerio Z. Brioso, Jr., Ernesto Z. Brioso, Concepcion Brioso-Nolasco, and Salvador Z. Brioso, were made substitute defendants in the case. Their counsels were definitely aware of such substitution. In fact, one of them, Atty. Salvador Z. Brioso, was one of the counsels of the defendants. It was the duty of said counsels to inform the heirs of the substitution after the court had issued the order granting the motion of the plaintiffs.

Moreover, Ernesto Brioso cannot deny the fact that he knew of the pendency of the action and the substitution of the heirs because he participated as a witness for the defendants even after the case against him was earlier dismissed. Undoubtedly, the court had acquired jurisdiction over the persons of the heirs and the judgment is thereby binding upon all of them.”[13]

Petitioners filed a Motion for Reconsideration of the above decision. Finding no new issues or arguments raised in the motion, the Court of Appeals denied the same.[14]

Hence, this petition.

The Issues

Petitioners posed these “two-fold issues”[15] for resolution:

- Whether there was a valid substitution of deceased Glicerio; and
- Whether the trial court acquired jurisdiction over the persons of the petitioners.

The Court's Ruling

The petition is partly meritorious.

Petitioners assert that the trial court failed to comply with the clear language of Section 17, Rule 3 of the old Rules of Court which provides as follows:

“Death of a party. After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.”[16]

Petitioners allege that, as there was no appointed administrator for the estate of the deceased defendant, the trial court should have ordered the heirs to appear personally before it and manifest whether they were willing to substitute Glicerio. Petitioners further aver that if none of the heirs appeared or manifested to act as substitutes, the trial court should have ordered the adverse party to procure the appointment of a legal representative of the deceased who should appear for and on behalf of the deceased's interest.

Petitioners also harp on their failure to receive a copy of the Spouses Mariano's motion for substitution of Glicerio as well as the Order of the trial court admitting the motion. Petitioners argue that, even if they received a copy of the Order, the same did not grant the Spouses Mariano's motion for substitution. Since they were not aware of the purported substitution because of the lack of service on them of the motion and the Order, petitioners insist that the entire proceedings in the trial court were void for lack of jurisdiction over their persons.

It must be pointed out that, contrary to the Spouses Mariano's view, their complaint for recovery of possession of real property is an action which survives the death of a party.[17] Such being the case, the rule on substitution of a deceased party is clearly applicable.

Under the express terms of Section 17 of the old Rules, in case of the death of a party and due notice is given to the trial court, it is the duty of the court to order the deceased's legal representative or heir to appear for the deceased.[18] Otherwise, “the trial held by the court without appearance of the deceased's legal representative or substitution of heirs and the judgment rendered after trial, are null and void.”[19]

Non-compliance with the rule on substitution of a deceased party renders the proceedings and judgment of the trial court infirm because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding. In other words, a party's right to due process is at stake, as we enunciated in *Vda. de Salazar v. Court of Appeals*,[20] thus -

“We should not lose sight of the principle underlying the general rule that formal substitution of heirs must be effectuated for them to be bound by a subsequent judgment. Such had been the general rule established not because the rule on substitution of heirs and that on appointment of a legal representative are jurisdictional requirements per se but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein.” (Emphasis supplied.)

In the instant case, it is true that the trial court, after receiving a notice of Glicerio's death, failed to order the appearance of his legal representative or heirs. Instead, the trial court issued an Order merely admitting

respondents' motion for substitution. There was no court order for Glicerio's legal representative to appear, nor did any such legal representative ever appear in court to be substituted for Glicerio. Neither did the respondents ever procure the appointment of such legal representative, nor did Glicerio's heirs ever ask to be substituted for Glicerio. Clearly, the trial court failed to observe the proper procedure in substituting Glicerio. As a result, contrary to the Court of Appeals' decision, no valid substitution transpired in the present case.[21]

Thus, we rule that the proceedings and judgment of the trial court are void as to Felicidad, Glicerio, Jr., Bener and Julito. There is no iota of proof that they were apprised of the litigation against Glicerio. There is no indication that they authorized Atty. Pardalis to represent them or any showing that they appeared in the proceedings. Given these facts, the trial court clearly did not acquire jurisdiction over their persons. Such being the case, these heirs cannot be bound by the judgment of the trial court, as we have pronounced in *Ferreria, et al. v. Vda. de Gonzales, et al.*,[22] thus -

“Inasmuch as Manolita Gonzales was never validly served a copy of the order granting the substitution and that furthermore, a valid substitution was never effected, consequently, the court never acquired jurisdiction over Manolita Gonzales for the purpose of making her a party to the case and making the decision binding upon her, either personally or as legal representative of the estate of her mother Manuela.”

However, despite the trial court's failure to adhere to the rule on substitution of a deceased party, its judgment remains valid and binding on the following heirs, namely, Salvador, Concepcion and Ernesto. Formal substitution of heirs is not necessary when the heirs themselves voluntarily appeared, shared in the case and presented evidence in defense of deceased defendant.[23] This is precisely because, despite the court's non-compliance with the rule on substitution, the heirs' right to due process was obviously not impaired.[24] In other words, the purpose of the rule on substitution of a deceased party was already achieved. The following facts indicate plainly that there was active participation of these heirs in the defense of Glicerio after his death.

First, Salvador and Concepcion were among the original defendants in the case. Needless to state, the trial court, even before Glicerio's death, already acquired jurisdiction over the persons of these heirs. Hence, the rule on substitution of a deceased party is no longer required as to Salvador and Concepcion because they were already impleaded as defendants. In fact, Salvador, a lawyer son of Glicerio, was also one of the counsels for defendants.

Second, the lengthy testimonies of Salvador, Concepcion and Ernesto show that they defended their deceased father. Both Concepcion and Salvador testified in defense not only of themselves but also of their deceased father. As to Ernesto, while he was dropped as a defendant, he testified and admitted that he was one of the substitutes of Glicerio, thus -

“INTERPRETER:

Please state your name and other personal circumstances.

WITNESS:

ERNESTO BRIOSO, 45 years old, widower, farmer and residing at Puro-Batia, Libmanan, Camarines Sur.

INTERPRETER:

Your witness is now ready.

ATTY. PARDALIS:

With the permission of the Honorable Court.

COURT:

Proceed.

Q:

Are you one of the defendants in this case who was substituted for the late Glicerio R. Brioso?

A:

Yes sir.

xxx”[25]

This shows that Ernesto understood that he was a substitute defendant in the case.

Third, Atty. Pardalis continued to represent Glicerio even after the latter’s demise. Acting on Glicerio’s behalf, Atty. Pardalis presented the testimonies of Salvador, Concepcion and Ernesto, to prove, among others, that Glicerio no longer had any interest in the Properties. These pieces of evidence clearly negate petitioners’ contention that Atty. Pardalis ceased to be Glicerio’s counsel upon the latter’s death.

Assuming that Atty. Pardalis no longer represented Glicerio after his death, he remained as counsel for Salvador, Concepcion and Marcos. He should have questioned immediately the validity of the proceedings absent any formal substitution of Glicerio. Yet, despite the court’s alleged lack of jurisdiction over the persons of his clients, Atty. Pardalis never bothered to challenge the same, not until after the trial court rendered its adverse decision.

Lastly, Atty. Pardalis received a copy of respondents’ motion for substitution and the trial court’s Order admitting the motion. Upon receipt of the motion and the Order, Atty. Pardalis should have immediately opposed the same for failure to comply with the rule on substitution. However, Atty. Pardalis did not question the motion and the Order, not until after the trial court rendered its decision. His long silence, which certainly binds his clients, can be construed as defendants’ submission to the court’s jurisdiction. The acquiescence of defendants and their counsel on the trial court’s jurisdiction effectively precluded them from questioning the proceedings in the trial court.

In *Ferreria et al. v. Vda. de Gonzales, et al.*, [26] Manolita Gonzales (one of the heirs of deceased defendant) was not served notice and, more importantly, never appeared in court, unlike Salvador, Concepcion and Ernesto who appeared and even testified regarding their father’s interest in the Properties. In sum, with the active participation of Salvador, Concepcion and Ernesto, the trial court acquired jurisdiction over their persons. Accordingly, the proceedings and the decision of the trial court are valid with respect to these heirs.

As regards Marcos Nolasco, he was impleaded as a defendant primarily because he and Concepcion were among the actual possessors of the Properties. It was even defendants’ contention that the complaint was defective for failure to implead Marcos as he was an indispensable party.[27] Accordingly, the Spouses Mariano impleaded Marcos as a defendant, without whom no final determination can be had of the action.[28] With Marcos’ inclusion as a party, it is beyond dispute that the trial court acquired jurisdiction over his person. Therefore, the proceedings and judgment of the trial court are valid and binding upon Marcos.

WHEREFORE, the instant petition is partly GRANTED. The Decision of the Court of Appeals dated September 2, 1997 is MODIFIED. As to Bener Brioso, Julito Brioso and Glicerio Brioso, Jr., the Decision of the Regional Trial Court, Branch 29, Libmanan, Camarines Sur, is void for lack of jurisdiction. As to Felicidad Brioso, Concepcion B. Nolasco, Marcos Nolasco, Salvador Brioso and Ernesto Brioso, the Decision of the Regional Trial Court, Branch 29, Libmanan, Camarines Sur, is valid.

SO ORDERED.

Vitug, (Acting Chairman), Ynares-Santiago, and Azcuna, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Justice Salome A. Montoya, concurred in by Justices Eugenio S. Labitoria and Portia Aliño-Hormachuelos.

[3] Penned by Judge Salvador G. Cajot.

[4] Originally docketed as Civil Case No. 214 which was filed with the Court of First Instance of Camarines Sur.

[5] Records of Civil Case No. L-006, p. 168.

[6] Ibid., pp. 228, 231.

[7] Ibid., p. 316.

[8] Ibid., p. 318.

[9] Ibid., p. 320.

[10] TSN, January 23, 1989 and February 3, 1989.

[11] Refers to Marcos Nolasco.

[12] CA Rollo, pp. 87 - 97.

[13] Rollo, pp. 23 - 38.

[14] Ibid., p. 40.

[15] Memorandum for Petitioners, Ibid., p. 164.

[16] This particular provision has already been amended by Section 16, Rule 3 of the 1997 Rules of Civil Procedure which reads:

“Death of party; duty of counsel. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.”

[17] *Aguas v. Lemos*, 5 SCRA 959 (1962).

[18] *Vda. de Dela Cruz v. Court of Appeals*, 88 SCRA 695 (1979) citing *Casañas v. Rosales*, 19 SCRA 462

(1967), Caisip, et al. v. Hon. Cabangon & Pineda, 109 Phil. 150 (1960) and Bonilla v. Barcena, 71 SCRA 491 (1976).

[19] Vda. de Salazar v. Court of Appeals, 250 SCRA 305 (1995).

[20] Ibid.

[21] Ferreria, et al. v. Vda. de Gonzales, et al., 104 Phil. 143 (1958).

[22] Ibid.

[23] Supra, see note 19.

[24] Riviera Filipina, Inc. v. Court of Appeals, G.R. No. 117355, April 5, 2002.

[25] TSN, February 3, 1989, pp. 1 - 2.

[26] Supra, see note 21.

[27] Records of Civil Case No. L-006, p. 162.

[28] Section 7, Rule 3 of the 1997 Rules of Civil Procedure.

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