FELIZARDO S. OBANDO AND THE ESTATES OF JOSE FIGUERAS AND DOÑA ALEGRIA STREBEL VDA. DE FIGUERAS, PETITIONERS, VS. EDUARDO F. FIGUERAS AND AMIGO REALTY CORPORATION AS REPRESENTED ...

G.R. No. 134854. January 18, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this appeal, the Court invokes the following principles: (1) a lawyer's standing in a case remains, until a substitute takes over pursuant to Section 26, Rule 138 of the Rules of Court; (2) a trial court may act upon a motion to dismiss at any time a ground therefor becomes available, even after a responsive pleading to the complaint has already been filed; (3) a civil case initiated by an estate administrator may be dismissed upon a showing that the said administrator's appointment as such has been revoked by the probate court; and (4) the dismissal of an action may be made after the ground therefor becomes known, even if the trial court has refused to do so earlier when that ground was not yet available.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, seeking to annul the July 30, 1998 Decision of the Court of Appeals[1] in CA-GR SP No. 47594, which affirmed the dismissal, without prejudice, of Petitioner Felizardo Obando's action for annulment of contract and reconveyance earlier ordered by the Regional Trial Court (RTC) of Quezon City,[2] Branch 218.

The Facts

In 1964, Alegria Strebel Figueras, together with her stepsons, Eduardo and Francisco, filed a Petition for settlement of the intestate estate of her deceased husband Jose Figueras.[3] While settlement of the estate was pending, she died and Eduardo assumed administration of the joint estates of Don Jose and Doña Alegria. Hardly had the proceedings in both intestacies begun when Eduardo was served a Petition for Probate of what purported to be Doña Alegria's Last Will and Testament, filed by Felizardo S. Obando (herein petitioner), a nephew of Doña Alegria.[4]

The alleged Will bequeathed to Petitioner Obando and several other members of the Obando clan properties left by the Figueras couple, including two parcels of land in Gilmore Avenue, New Manila, Quezon City, covered by TCT Nos. 13741 and 17679.[5] When the probate case was consolidated with the intestate proceedings, Petitioner Obando was appointed as Eduardo's co-administrator of the joint estates.[6]

As Eduardo insisted that the alleged Will was a forgery, the document was submitted to the National Bureau of Investigation (NBI) for examination and comparison of Doña Alegria's alleged signature therein with samples which both parties accepted as authentic. The NBI found that the questioned and the standard signatures were not made by the same person.[7] This led to the indictment and the conviction of Petitioner Obando in Criminal Case

90-85819[8] for estafa through falsification of a public document.

On February 20, 1990, the probate court denied Eduardo's Motion for authority to sell the aforementioned two parcels of land in New Manila.[9] Despite such denial, Eduardo sold the lots to Amigo Realty Corporation on the strength of an Order issued by the probate court on May 15, 1991. New titles were issued for these lots in the name of Amigo Realty.[10]

On June 4, 1992, Petitioner Obando, in his capacity as co-administrator and universal heir of Doña Alegria, filed a Complaint against Eduardo and Amigo Realty (collectively referred to as the respondents) for the nullification of the sale. The proceedings were docketed as Civil Case No. Q-92-12384 and raffled to the Regional Trial Court of Quezon City, Branch 79.

However, in Special Proceeding Nos. 61567 and 123948, the probate court, in its Order dated December 17, 1997, removed Petitioner Obando from his office as co-administrator of the joint estate of the Figueras spouses.[11] Consequently, in the civil case, respondents filed a Joint Motion to Dismiss dated January 27, 1998, after Obando had rested his case. The respondents built their evidence around the loss of his legal standing to pursue the case.[12] In its Order dated February 11, 1993, the trial court granted the Motion and dismissed the civil case without prejudice.[13]

Petitioner Obando filed a Motion for Reconsideration to no avail. As earlier stated, the Court of Appeals likewise dismissed his Petition for Certiorari and Mandamus and affirmed the dismissal Order of the RTC.[14]

Ruling of the Court of Appeals

The Court of Appeals rejected the contention of Obando that he did not lose his legal personality to prosecute the civil case since there was no categorical statement that the purported will was a forgery and its probate was still pending.

The CA affirmed the dismissal of the action for reconveyance because the probate court's Order dated February 5, 1998 "alluded" to the fact that the alleged Will was a forgery. That the probate of the alleged Will had not yet been decided on the merits did not change the fact that the probate court had removed Petitioner Obando as co-administrator. The dismissal of the civil case was without prejudice, because the trial judge anticipated that Obando could regain co-administration of the estates on appeal.

Hence, this Petition.[15]

Assignment of Errors

In their Memorandum, petitioners raise the following issues:[16]

> "A. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN SANCTIONING THE TRIAL COURT'S ALLOWANCE OF RESPONDENTS' JOINT MOTION TO DISMISS, DESPITE THE FACT THAT ONE OF THE LAWYER-MOVANTS THEREIN WAS NO LONGER THE COUNSEL OF RECORD FOR RESPONDENT FIGUERAS AT THE TIME THE MOTION WAS FILED.
>
> "B. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN SANCTIONING THE TRIAL COURT'S RADICAL DEPARTURE FROM THE LAW WHEN IT GRANTED A MOTION TO DISMISS ON LACK OF CAPACITY TO SUE/LEGAL STANDING AT THE TIME WHEN THE [PETITIONERS] HAVE ALREADY RESTED THEIR CASE AND THE [RESPONDENTS] HAVE BEGUN PRESENTATION OF THEIR EVIDENCE.
>
> "C. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT SANCTIONED THE TRIAL COURT'S DISMISSAL OF THE CASE BASED ON ORDERS OF OTHER COURTS THAT HAVE

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NOT YET ATTAINED FINALITY.

"D. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE TRIAL COURT'S WHIMSICAL AND CAPRICIOUS DEPARTURE FROM ITS PREVIOUS RULINGS DENYING RESPONDENTS' MOTION TO DISMISS AND MOTION TO SUSPEND PROCEEDINGS.

"E. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT RENDERED ITS 30 JULY 1998 DECISION IN CA-G.R. 47594 UPHOLDING THE TRIAL COURT'S ORDERS DATED 11 FEBRUARY 1998 AND 12 MARCH 1998."

Simply stated, the following issues are raised by the petitioners: (1) whether the trial court could act on a motion filed by a lawyer who was allegedly no longer Eduardo's counsel of record; (2) whether a motion to dismiss filed after the responsive pleadings were already made can still be granted; (3) whether the conviction of Petitioner Obando for estafa through falsification and the revocation of his appointment as administrator, both of which are on appeal, constitute sufficient grounds to dismiss the civil case; and (4) whether there was a conflict between the Order dismissing the civil case and the previous actions of the trial court.

The Court's Ruling

The Petition is devoid of merit.

First Issue:
Counsel of Record

Petitioners claim that when Atty. Joaquin Yuseco filed the Motion to Dismiss, he no longer represented the respondents, as shown by Eduardo's Manifestation and Motion dated January 8, 1998, dispensing with said counsel's services in the proceedings in view of a Compromise Agreement with Petitioner Obando.[17]

We disagree. Representation continues until the court dispenses with the services of counsel in accordance with Section 26, Rule 138 of the Rules of Court.[18] Counsel may be validly substituted only if the following requisites are complied with: (1) new counsel files a written application for substitution; (2) the client's written consent is obtained; and (3) the written consent of the lawyer to be substituted is secured, if it can still be; if the written consent can no longer be obtained, then the application for substitution must carry proof that notice of the motion has been served on the attorney to be substituted in the manner required by the Rules.[19]

In this case, we are convinced that Eduardo did not dismiss Attorney Yuseco. In fact, the former manifested that he had been tricked by Petitioner Obando into signing the aforesaid Manifestation and Motion and Compromise Agreement. Besides, the filing of the Motion to Dismiss was not prejudicial but beneficial to the said respondent; hence, he had no reason to complain. At the discretion of the court, an attorney who has already been dismissed by the client is allowed to intervene in a case in order to protect the client's rights. In the present case, had there been any irregularity, it should have been raised by the respondents, not the petitioners.

Second Issue:
Timeliness of the Motion to Dismiss

The Rules provide that a motion to dismiss may be submitted only before the filing of a responsive pleading.[20] Thus, petitioners complain that it was already too late for Respondent Eduardo Figueras to file a Motion to Dismiss after Obando had finished presenting his evidence.

This is not so. The period to file a motion to dismiss depends upon the circumstances of the case. Section 1 of Rule 16 of the Rules of Court requires that, in general, a motion to dismiss should be filed within the reglementary period for filing a responsive pleading. Thus, a motion to dismiss alleging improper venue cannot be entertained

unless made within that period.[21]

However, even after an answer has been filed, the Court has allowed a defendant to file a motion to dismiss on the following grounds: (1) lack of jurisdiction,[22] (2) litis pendentia,[23] (3) lack of cause of action,[24] and (4) discovery during trial of evidence that would constitute a ground for dismissal.[25] Except for lack of cause of action or lack of jurisdiction, the grounds under Section 1 of Rule 16 may be waived. If a particular ground for dismissal is not raised or if no motion to dismiss is filed at all within the reglementary period, it is generally considered waived under Section 1, Rule 9 of the Rules.[26]

Applying this principle to the case at bar, the respondents did not waive their right to move for the dismissal of the civil case based on Petitioner Obando's lack of legal capacity. It must be pointed out that it was only after he had been convicted of estafa through falsification that the probate court divested him of his representation of the Figueras estates. It was only then that this ground became available to the respondents. Hence, it could not be said that they waived it by raising it in a Motion to Dismiss filed after their Answer was submitted. Verily, if the plaintiff loses his capacity to sue during the pendency of the case, as in the present controversy, the defendant should be allowed to file a motion to dismiss, even after the lapse of the reglementary period for filing a responsive pleading.

Third Issue:
Removal from Administration

Petitioners aver that it was premature for the trial court to dismiss the civil case because Obando's conviction for estafa through falsification was still on appeal.

We disagree. This argument has no bearing at all on the dismissal of the civil case. Petitioner Obando derived his power to represent the estate of the deceased couple from his appointment as co-administrator.[27] When the probate court removed him from office, he lost that authority. Since he lacked the legal capacity to sue on behalf of the Figueras estates, he could not continue prosecuting the civil case.[28] Thus the trial court properly granted the Motion to Dismiss on this ground.[29] Whether a final conviction for a crime involving moral turpitude is necessary to remove him from his administration is not a proper issue in this Petition. He should raise the matter in his appeal of the Decision removing him from administration of the Figueras estates.

The fact that the conviction of Obando and his removal from administration are on appeal only means that his legal standing could be restored; thus, the civil case was correctly dismissed without prejudice. If his conviction is reversed and his appointment restored by the probate court, the case may continue without being barred by res judicata. The lower court's Decision showed that it was careful in its action. On the other hand, Obando has yet to show that he has regained administration of the Figueras estates. Noteworthy also is the fact that his removal from office was predicated not only on his conviction for a crime, but also on his failure to render an accounting of the rentals of a property leased to the Community of Learners.

Fourth Issue:
No Conflicting Rulings

Respondent Eduardo Figueras' earlier Motion to Dismiss was denied in the trial court's March 4, 1993 Order which reads:

> "x x x [I]t is pertinent to note that the criminal case of Estafa through Falsification of Public Document filed against [petitioner] and the Petition to Remove him as co-administrator are still pending determination. Thus, suffice it to state that while herein [petitioner] remains as the co-administrator of the estates of the deceased Figueras the Court will continue to recognize his right to institute the instant case in his capacity as judicial

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> administrator, unless he be removed as such by the probate Court pursuant to Rule 82 of the Revised Rules of Court."[30]

Thus, petitioners allege that the trial court whimsically and capriciously departed from its previous rulings when, in its Resolution dated February 11, 1993, it granted Eduardo's later Motion to Dismiss.[31]

We cannot see any conflict between these trial court rulings. Obviously, they were based on different grounds. The first Motion to Dismiss was denied because, at the time, Petitioner Obando still had legal capacity to sue as co-administrator of the Figueras estates. On the other hand, the second Motion was granted because the probate court had already removed him from his office as co-administrator. The change in his legal capacity accounts for the difference in the adjudication of the trial court. We see no reversible error in the appellate court's affirmance of the trial court.

WHEREFORE, the Petition is hereby DENIED and the assailed Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Penned by J. Jesus M. Elbinias and concurred in by JJ. Demetrio G. Demetria and Roberto A. Barrios.

[2] Presided over by Judge Hilario L. Laqui.

[3] Docketed as Special Proceedings No. 61567.

[4] Docketed as Special Proceedings No. 123948.

[5] Petition, p. 3; rollo, p. 15.

[6] Ibid.

[7] Annex "1"; rollo, pp. 66-67.

[8] RTC Decision, p. 8; rollo, p. 87.

[9] Memorandum for Petitioner, p. 3; rollo, p. 701.

[10] Ibid.

[11] Order of December 17, 1997; rollo, pp. 89-91.

[12] Annex "3"; rollo, pp. 74-77.

[13] RTC Resolution; rollo, p. 47.

[14] CA Decision; rollo, p. 9.

[15] This case was submitted for decision on May 7, 1999 upon this Court's receipt of the petitioners' Memorandum signed by Atty. Redentor S. Roque. The respondents' Memorandum was submitted on April 20, 1999 by Atty. Joaquin Yuseco.

[16] Rollo, pp. 204-205.

[17] Annex D, Petition; rollo, pp. 41-42.

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[18] "SEC. 26. Change of attorneys.- An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

"A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and execution issued in pursuance of such judgments rendered in the case wherein his service had been retained by the client."

[19] Yu v. Court of Appeals, 135 SCRA 181, 189-190, February 28, 1985.

[20] The Rules of Court provides in Rule 16, Section 1:

"SECTION 1. Grounds.—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
'x x x.....x x x.....x x x
'(d)That the plaintiff has no legal capacity to sue;
'x x x.....x x x.....x x x."

[21] Juanillo v. de la Rama, 74 Phil. 43, November 28, 1942; Vicente J. Francisco, The Revised Rules of Court in the Philippines, Vol. 1, 1973 ed., p. 880.

[22] Community Investment & Finance Corp. v. Garcia, 88 Phil. 215, 220-221, February 27, 1951; Ker & Co. v. Court of Tax Appeals, 4 SCRA 160, 165, January 31, 1962.

[23] Matela v. Chua Tay, 5 SCRA 163, 169-170, May 30, 1962.

[24] Ocampo v. Buenaventura, 55 SCRA 267, 274-275, January 24, 1974.

[25] Quiaoit v. Consolacion, 73 SCRA 208, 213, September 30, 1976.

[26] The Rules of Court provides in Rule 9, Section 1:

"SECTION 1. Defenses and objections not pleaded.- Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim."

[27] The Rules of Court, in Rule 87, Sec. 2, allows an executor or administrator to bring or defend, in the right of the deceased, actions for causes which survive.

[28] Lunsod v. Ortega, 46 Phil. 664, 676, September 19, 1921.

[29] Acain v. Intermediate Appellate Court, 155 SCRA 100, 110, October 27, 1987; Saguimsim v. Lindayag, 6 SCRA 874, December 17, 1962.

[30] Order of March 4, 1993, rollo, p. 35.

[31] Resolution dated February 11, 1993; rollo, pp. 46-47.

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