

ROBERTO P. TOLENTINO, PETITIONER, VS. DOLORES NATANAUAN, RAFAELA NATANAUAN, ROMULO NATANAUAN, JR., SPOUSES ALEJO & FILOMENA TOLENTINO, PERFECTO P. FERNANDEZ, BUCK ESTATE, INC., ...

G.R. No. 135441. November 20, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court which seeks the reversal of the decision[1] of the Court of Appeals in CA- G.R. SP No. 42612 dismissing Roberto Tolentino's petition for certiorari .

The subject of herein dispute is a parcel of land located in Sungay, Tagaytay City, consisting of 50,000 square meters.

Based on the records of this case, the following are the antecedent facts involving the subject property:

In a Deed of Sale dated August 31, 1976, Jose Natanauan sold the property to respondents Dolores, Rafaela, Ernestina, and Romulo,[2] all surnamed Natanauan[3] (Natanauans for brevity). The Natanauans later sold the property to spouses Alejo and Filomena Tolentino by virtue of a Deed of Sale executed on January 3, 1978.[4] Four years later, or, on April 1, 1982, the Natanauans filed with the Regional Trial Court of Cavite (Branch 18) an action for annulment of deed of sale and reconveyance with damages against the spouses Tolentino, docketed as Civil Case No. TG-680.[5] However, on joint motion of both parties, the trial court dismissed the case in its Order dated February 3, 1984.[6]

More than six years later, or on September 27, 1990, the Natanauans filed with the same Regional Trial Court, a Manifestation with Motion to Modify Order asking that the dismissal of Civil Case No. TG-680 per its Order dated February 3, 1984 be modified to the effect that the case should be dismissed with prejudice.[7] The Regional Trial Court denied the motion.[8] On motion for reconsideration of said respondents, the trial court issued an Order dated November 8, 1990 granting the motion and revising the order of dismissal to one with prejudice. [9]

On April 11, 1991, the Natanauans filed another action for recovery of possession with damages, docketed as Civil Case No. TG-1188, against the spouses Tolentino seeking the rescission of the contract of sale executed on January 3, 1978 due to the repeated failure of the spouses Tolentino to pay the remaining balance on the purchase price of the subject property.

After trial on the merits, the same trial court rendered judgment in favor of respondents in its Decision dated March 30, 1993,[10] the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against the defendants as follows:

- Declaring the Deed of Sale (Exhibit "B") as having been validly rescinded by plaintiffs for the repeated failure of defendants to pay the remainder of the obligations under it;
- Directing the defendants-spouses Alejo P. Tolentino and Filomena Tolentino to reconvey and surrender possession of the parcel of land, which is identified and fully described in TCT No. T-107593 and Exhibit "B", to the plaintiffs;
- Directing the Register of Deeds for the Province of Cavite to cancel TCT No. T-107593 and to issue, in lieu thereof, a new title in favor of and in the names of plaintiffs; and
- Ordering the defendants to pay plaintiffs, the sums of P20,000.00 for and as litigation expenses incurred by them in this case, and P25,000.00, for and as attorney's fees; plus costs of suit.

SO ORDERED.[11] (Emphasis supplied)

On appeal, docketed as CA-G.R. CV No. 43426, the Court of Appeals in its decision dated May 10, 1995,[12] affirmed the decision of the trial court with modification expressly deleting that portion of the decision directing the Register of Deeds to cancel TCT No. T-107593 and to issue a new title in favor of the respondents.[13] Said decision became final and executory on June 14, 1995, and entry of judgment was accordingly made.[14]

However, it appears that on June 28, 1994, or eleven months before the Court of Appeals promulgated said decision, the Natanauans have filed another complaint with the Regional Trial Court of Cavite (Branch 18), this time for declaration of nullity and damages against spouses Tolentino, Roberto P. Tolentino (Roberto for brevity), Notary Public Perfecto P. Fernandez, Buck Estate Inc., Rizal Commercial Banking Corporation (RCBC) and the Registry of Deeds of Tagaytay City, docketed as Civil Case No. TG-1421. The complaint alleges that some time in 1993, Dolores, one of the Natanauans, discovered from the records of the Registry of Deeds, the existence of OCT No. 01822 issued by the Land Registration Commission in the names of Jose Natanauan, Salud Marquez, Melquiades Parungao and Asuncion Fajardo, covering the Tagaytay property; the property was subsequently sold by Jose, Salud, Melquiades and Asuncion to spouses Tolentino, and TCT No. T-107593 was issued in their names, by virtue of a falsified/forged Deed of Sale dated August 3, 1979; Jose Natanauan, one of the sellers, died on June 12, 1977 in Batangas; another deed of sale, this time dated March 9, 1979, was falsified/forged by the defendants, wherein the Natanauans purportedly sold the property to defendant Roberto; the property is now covered by TCT Nos. T-28479, T-28480, T-28481, T-28482, T-28483, T-28484 and T-28485, in the name of defendant Buck Estate Inc. with defendant Roberto as one of its stockholders; and Roberto mortgaged the property in favor of his co-defendant RCBC for the sum of P10,000,000.00.[15]

Instead of filing an Answer, defendant Roberto filed on July 28, 1994, a motion to dismiss the case based on the following grounds:

- That the complaint states no cause of action against herein defendant;
- That there is a pending case between the same parties and subject matter;
- That the complaint is barred by prescription; and
- That the Verification with Certification of Non-Forum Shopping is defective (sic).[16]

Defendants spouses Tolentino and Buck Estate Inc. also filed their respective motions to dismiss. Defendants RCBC and the Register of Deeds filed their separate Answers. The Regional Trial Court denied the motions to dismiss in its Order dated September 23, 1994 and ordered defendants Roberto, spouses Tolentino and Buck Estate Inc. to file their respective Answers.[17] Accordingly, said defendants filed their respective Answers.

Defendant Roberto subsequently filed a Motion to Admit Amended Answer and Motion for Preliminary Hearing

on the Special Defenses. He set forth the defenses that the complaint states no cause of action against him; the action is barred by prior judgment and by the statute of limitations; and the plaintiffs Natanauans are guilty of forum shopping.[18]

Acting on defendant Roberto's motion, the trial court issued an Order dated May 15, 1995, admitting his Amended Answer and denying the motion for preliminary hearing. The trial court found the grounds relied upon by petitioner not to be indubitable and the merits thereof could be appreciated only through a "full dress trial." [19]

On October 25, 1995, a certain Zosimo Nera, an architect, filed an Answer- In-Intervention claiming that he is the present owner of the property in dispute, having bought it from defendant Buck Estate, Inc. on March 9, 1994.[20]

On March 5, 1996, defendant Roberto filed a Motion to Re-Examine and Reconsider its Previous Orders Especially the Order of May 15, 1995 with Manifestation to Dismiss the Case.[21] In essence, the motion sought the dismissal of the case on the grounds that the trial court does not have jurisdiction to try the case as there are already two final judgments involving the same subject matter; respondents are guilty of forum shopping; and, the action is barred by estoppel and the statutes of limitations.[22]

Denying the motion in its Order dated April 29, 1996, the trial court ruled that "the grounds invoked by the herein defendant in support of his present motion to dismiss has already been ruled upon not only by this Court but also the Honorable Court of Appeals," apparently referring to the decision of the Court of Appeals in CA-G.R. CV No. 43426.[23] Defendant Roberto filed a motion for reconsideration but the trial court denied it.[24]

Thus, defendant Roberto (hereinafter referred to as petitioner) brought the case to the Court of Appeals on petition for certiorari[25] under Rule 65 of the Rules of Court which the appellate court dismissed per its Decision dated August 10, 1998. In dismissing the petition, the Court of Appeals treated the Motion to Re-Examine and Reconsider its Previous Orders Especially the Order of May 15, 1995 with Manifestation to Dismiss the Case filed by petitioner as a second motion for reconsideration and considered it as a prohibited pleading. The appellate court further ruled that the special civil action for certiorari filed by petitioner is not the proper remedy as the records do not show that the trial court committed grave abuse of discretion; petitioner should have reiterated the grounds in his Answer, proceed to trial and appeal any adverse decision; and that contrary to petitioner's posture, the trial court had ruled that respondents are not guilty of forum shopping, nor are they barred by estoppel, and the principle of res judicata does not apply.[26]

Hence, the present petition for review. Petitioner contends that the Court of Appeals erred when it denied his petition.

Without presenting any new and substantial grounds, petitioner reiterated the issues and arguments previously raised and passed upon by both the trial court and the Court of Appeals.

The petition must be denied as we find no cogent reason to disturb the findings of the trial court and the Court of Appeals.

An examination of the records of this case shows that petitioner had already previously filed a motion to dismiss raising basically the same issues and arguments set forth in his Motion to Re-Examine and Reconsider its Previous Orders. Despite the difference in nomenclature, the motion to re-examine also sought the dismissal of the case and partakes of a motion to dismiss. Having been denied by the trial court, petitioner's recourse was to have it reviewed in the ordinary course of law by an appeal from the judgment after trial. As correctly ruled by the Court of Appeals, the petition for certiorari filed before it is not the proper remedy to question its denial, it being merely an interlocutory order, i.e., one that does not terminate nor finally dispose of the case, and leaves something else to be done by the court before the case is finally decided on the merits.[27] In the case of Bangko

Silangan Development Bank vs. Court of Appeals,[28] the Court reiterated the well-settled rule that:

... an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be the 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.

However, the Court of Appeals erroneously applied the proscription against second motions for reconsideration to interlocutory orders.[29] As correctly pointed out by petitioner, the rule prohibiting a second motion for reconsideration applies to final judgments and orders, not interlocutory orders. It may be denied on the ground that it is a & rehash & or mere reiteration of grounds and arguments already passed upon and resolved by the court, but it cannot be rejected on the ground that it is a second motion for reconsideration proscribed by law.[30]

Nevertheless, we find that the Court of Appeals did not commit any grave abuse of discretion when it ruled that the principle of *res judicata* does not apply, that respondents are not guilty of forum shopping and that respondents Natanauans in Civil Case No. TG-1421 are not barred by estoppel. The petition for certiorari can be availed of only if the denial of the motion is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

On *res judicata*.

The elements of *res judicata* are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.[31]

The final judgment in Civil Case No. TG-1188 does not constitute as a bar on Civil Case No. TG-1421 for the plain and simple reason that the causes of action, issues and parties involved in Civil Case No. TG-1188 are different from those involved in Civil Case No. TG-1421.

There is no denying that both Civil Cases Nos. TG-1188 and TG-1421 involve the same Tagaytay property. In Civil Case No. TG-1188, respondents Natanauans' action is for the rescission of the Deed of Sale dated January 3, 1978 and the reconveyance of the Tagaytay property due to the alleged failure of the spouses Tolentino to pay the full purchase price of the subject property under the contract of sale dated January 3, 1978 executed by and between them and the Natanauans; whereas, in Civil Case No. TG-1421, respondents Natanauans' action is for the declaration of the nullity of the Deed of Sale dated August 3, 1979, wherein Jose Natanauan, who allegedly died on June 12, 1977, Salud Marqueses, Melquiades Parungao, and Asuncion Fajardo, purportedly sold the same property to the spouses Tolentino. Respondents Natanauans included petitioner Tolentino and Notary Public Perfecto P. Fernandez as defendants in Civil Case No. TG-1421 as they allegedly connived with the spouses Tolentino in forging/falsifying the signatures of the sellers. Buck Estate Inc., RCBC and the Registry of Deeds of Tagaytay City were also included as defendants in Civil Case No. TG-1421. All these clearly show that the fourth element of *res judicata* is absent. There are no identities of parties, subject matter and causes of action between the two civil cases.

On forum shopping.

It is settled that its essence is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[32] Inasmuch as the elements of *litis pendentia* or *res judicata* are not present, as previously discussed, the lower courts correctly hold that respondents Natanauans cannot be held guilty of engaging in forum shopping.

On estoppel.

Petitioner claims that respondents Natanauans are estopped from raising the nullity of the deed of sale because of their failure to raise it in Civil Case Nos. TG-680 and TG-1188. This argument would have been plausible if the causes of action and issues in these three cases are all the same. However, as we have pointed out earlier, Civil Cases Nos. TG-680 and TG-1188 involve the Deed of Sale dated January 3, 1978, while Civil Case No. TG-1421 involves the alleged fraudulent Deed of Sale dated August 3, 1979, the existence of which was allegedly discovered by respondents Natanauans only in 1993. It is only after a full-blown trial that the trial court would be able to determine whether or not respondents Natanauans could have raised this matter in Civil Cases Nos. TG-680 and TG-1188 which were filed in 1982 and 1991, respectively. The trial court correctly held that the trial thereon must proceed.

WHEREFORE, the petition for review is hereby DENIED for lack of merit. Let the records of Civil Case No. TG-1421 be remanded to the Regional Trial Court of Cavite (Branch 18) for further proceedings.

Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr. and Tinga, JJ., concur.

[1] Penned by Associate Justice Jorge S. Imperial (now deceased); Associate Justice Ramon A. Barcelona (now retired) and former Associate Justice Demetrio G. Demetria, concurring.

[2] Romulo died on January 23, 1994 in the United States and was succeeded by his son Romulo, Jr..

[3] Exhibit "C".

[4] Exhibit "B".

[5] Id., pp. 297-302.

[6] Id., p. 303.

[7] Id., pp. 304-305.

[8] Id., p. 306.

[9] Id., p. 309.

[10] Id., pp. 356-362.

[11] Id., pp. 361-362.

[12] Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Arturo B. Buena (now retired Associate Justice of the Supreme Court) and Cancio C. Garcia (now Presiding Justice).

[13] Records, p. 460.

[14] Id., p. 461.

[15] Id., pp. 6-13.

[16] Id., p. 112.

[17] *Id.*, p. 203.

[18] *Id.*, pp. 288-294.

[19] *Id.*, p. 319.

[20] *Id.*, pp. 390-392, 416-425.

[21] *Id.*, pp. 430-445.

[22] *Id.*, pp. 436-444.

[23] *Id.*, p. 468.

[24] *Id.*, pp. 488-491.

[25] Docketed as CA- G.R. No. 42612.

[26] *Rollo*, pp. 37-39.

[27] *Metropolitan Bank & Trust Company vs. Court of Appeals*, G.R. No. 110147, April 17, 2001, 356 SCRA 563, 570.

[28] G.R. No. 110480, June 29, 2001, 360 SCRA 322, 334.

[29] *Philgreen Construction Corporation vs. Court of Appeals*, G.R. No. 120408, April 18, 1997, 271 SCRA 719, 726.

[30] *Ibid.*

[31] *Sta. Lucia Realty and Development, Inc. vs. Cabrigas*, G.R. No. 134895, June 19, 2001, 358 SCRA 715, 728.

[32] *Ong vs. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 199.

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