

REBECCA T. CABUTIHAN, PETITIONER, VS. LANDCENTER CONSTRUCTION & DEVELOPMENT CORPORATION, RESPONDENT.

G.R. No. 146594. June 10, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Breach of contract gives rise to a cause of action for specific performance or for rescission. A suit for such breach is not capable of pecuniary estimation; hence, the assessed value of the real estate, subject of the said action, should not be considered in computing the filing fees. Neither a misjoinder nor a non-joinder of parties is a ground for dismissal of an action, because parties may be dropped or added at any stage of the proceedings.

The Case

Before us is a Petition for Review on Certiorari under Rule 45, assailing the Orders dated September 8, 2000 and November 21, 2000, promulgated by of the Regional Trial Court (RTC) of Pasig City, Branch 263.[1] The first assailed Order disposed as follows:

“WHEREFORE, foregoing premises considered, this Court hereby resolves to dismiss the instant complaint.”[2]

Reconsideration was denied in the second challenged Order.[3]

The Facts

Culled from the pleadings, the facts of this case are as follows.

On December 3, 1996, herein respondent – Landcenter Construction & Development Corporation, represented by Wilfredo B. Maghuyop -- entered into an Agreement[4] with Petitioner Rebecca Cabutihan. The Agreement stipulates:

“WHEREAS, [respondent corporation], x x x is the absolute owner, x x x of a parcel of land situated at Kay-biga, Paranaque, Metro Manila covered under Transfer Certificate of Title No. (S-30409) (partially cancelled by TCT Nos. 110001 to 110239) and particularly described as follows:

‘A parcel of land (Plan Psu-80206, Case No. 290, G.L.R.O. Record No. 2291), situated in the Barrio of Kay-biga, Municipality of Paranaque, Province of Rizal. Bounded on the NE., by properties of Eulogio Cruz and Isidro Alano; on the E., by property of Justo Bernardo; on the SE., by properties of Marcelo Nofuente and Lorenzo Molera; on the SW., by properties of Higino and Pedro P. Lopez; on the W., by property of Odon Rodriguez; and on the NW., by properties of Evaristo de los Santos and Pastor Leonardo.....; containing an area of ONE HUNDRED SEVEN THOUSAND AND FORTY SEVEN (107,047) SQUARE METERS, more or less.’

“WHEREAS, [respondent corporation] decided to engage the assistance of [petitioner] and x x x herein called the FACILITATOR for the purpose of facilitating and arranging the recovery of the property in question, as well as

the financing of such undertakings necessary in connection thereto;

“WHEREFORE, premises considered and of the mutual covenants of the parties, they have agreed, as follows:

- The FACILITATOR undertakes to effect the recovery of the property subject hereof, including the financing of the undertaking, up to the registration of the same in the name of [respondent corporation], except any and all taxes due;
- The FACILITATOR shall be responsible for whatever arrangements necessary in relation to the squatters presently occupying [a] portion of the property, as well as the legitimate buyers of lots thereof;
- As compensation for the undertaking of the FACILITATOR, [she] shall be entitled to Twenty [Percent] (20%) of the total area of the property thus recovered for and in behalf of [respondent corporation].

xxx xxx xxx.”[5]

Armed with Board Resolution No. 01, Series of 1997,[6] which had authorized her to represent the corporation, Luz Baylon Ponce entered into a February 11, 1997 Deed of Undertaking with a group composed of petitioner, Wenifredo P. Forro, Nicanor Radan Sr. and Atty. Prospero A. Anave. The Deed states the following:

“WHEREAS, the UNDERTAKER [respondent corporation] solicited, engaged and hereby voluntarily acknowledges the assistance of certain persons, in recovering, arranging and financing the undertaking up to completion/consummation of the same;

“WHEREAS, the UNDERTAKER freely, voluntarily, unconditionally and irrevocably agreed, committed and undertook to compensate x x x said persons, in the manner, specified hereinbelow;

“WHEREFORE, considering the foregoing premises, and the mutual covenants of the parties, the UNDERTAKER hereby unconditionally and irrevocably [c]ommit[s] and [u]ndertake[s], as follows:

“1. To pay or compensate the following persons, based on the gross area of the afore-described parcel of land or gross proceeds of the sale thereof, as the case may be, to wit:

Rebecca T. Cabutihan -----

20%

Wenifredo P. Forro -----

10%

Nicanor Radan, Sr. -----

4%

Atty. Prospero A. Anave -----

2.5%

TOTAL -----

36.5%

“2. Execute a Deed of Assignment unto and in favor of each of the persons above-mentioned corresponding to their respective shares in the subject parcel of land or in the proceeds thereof;

“3. This Undertaking as well as the Deed of Assignment above-stated shall be effective and binding upon the heirs, successors-in-interest, assigns or designates of the parties herein.”[7]

An action for specific performance with damages was filed by petitioner on October 14, 1999 before the RTC of Pasig City, Branch 263. She alleged:

“[6.] [Petitioner] accomplished her undertakings under the subject Agreement and the Undertaking. So in a letter dated 18 April 1997, x x x, [respondent corporation] was informed accordingly thereof. Simultaneously, [petitioner] demanded upon [respondent corporation] to execute the corresponding Deed of Assignment of the lots in the subject property, as compensation for the services rendered in favor of the [respondent corporation]. The subject letter was duly received and acknowledged receipt, by then Acting Corporate Secretary of the [respondent corporation].

“[7.] [Respondent corporation] failed and refused to act on x x x said demand of [petitioner]. Hence, [she] sent a letter dated May 8, 1997, to the Register of Deeds for Paranaque, to inform x x x said Office of x x x [her] claim x x x;

“[8.] x x x [T]he subject property was already transferred to and registered in the name of [respondent corporation] under Transfer Certificate of Title No. -123917-, of the Registry of Deeds for Paranaque City x x x;

xxx xxx xxx

“[10.] With x x x said title of the property now in the possession of the [respondent corporation], [petitioner] is apprehensive that the more that [she] will not be able to obtain from [respondent corporation], compliance with the afore-stated Agreement and Undertaking, to the extreme detriment and prejudice of [petitioner] and her group, x x x;

xxx xxx xxx

“[12.] Then in a letter,[8] dated 10 September 1999, [petitioner] through counsel sent to [respondent corporation] a Formal Demand, to comply with its obligation x x x but x x x [respondent corporation] did not heed the demand. x x x.”[9]

Petitioner prayed, inter alia, that respondent corporation be ordered to execute the appropriate document assigning, conveying, transferring and delivering the particular lots in her favor. The lots represented compensation for the undertakings she performed and accomplished, as embodied in the Agreement.

Respondent then filed a Motion to Dismiss, alleging the following:

“5. Because of the troubled situation obtaining at the management level of [respondent corporation], the sale between [respondent corporation] and PCIB regarding the Fourth Estate Subdivision was not registered with the Register of Deeds office, although [respondent corporation] continued holding the deed of sale over the Fourth Estate Subdivision.

“6. A group of persons led by one Wilfredo Maghuyop, including herein [petitioner], Wenifredo Forro, Nicanor Radan, and others, taking advantage of the management mess at [respondent corporation], tried to grab ownership of the [respondent corporation], and with use of fraud, cheat, misrepresentation and theft of

vital documents from the office of [respondent corporation], succeeded in filing with the Securities and Exchange Commission false papers and documents purporting to show that the Articles of Incorporation of [respondent corporation] had been amended, installing Maghuyop as president of [respondent corporation]. It was on these occasions that [petitioner] and her companions x x x, with use of fraud, stealth, tricks, deceit and cheat succeeded in letting Luz Baylon Ponce sign a so-called 'Deed of Undertaking' by virtue of which [respondent corporation] is duty-bound to give to [petitioner], Forro, Radan and Atty. Prospero Anave 36.5% of the land area of the Fourth Estate Subdivision as compensation for alleged services and expenses made by these people in favor of [respondent corporation]. They also caused said x x x Maghuyop to sign an 'Agreement' with [petitioner] expressing an obligation on the part of [respondent corporation] to give a big part of the land x x x to [petitioner]. These 'Agreement' and 'Deed of Undertaking' are being made by herein [petitioner] as her causes of action in the present case.

"Wilfredo Maghuyop was a stranger to [respondent corporation], and he was an impostor used by [petitioner] and her companions to barge into the management of [respondent corporation] for the purpose of stealing and creating an obligation against [respondent corporation] in their favor.

"7. But Luz Baylon Ponce, whose signature appears on the instrument denominated as 'Deed of Undertaking,' vehemently denies that she signed said instrument freely and voluntarily. She says that Wenifredo Forro and Nicanor Radan were once real estate agents of [respondent corporation] who promised to help sell lots from her project Villaluz II Subdivision located [in] Malibay, Pasay City. According to Luz Baylon Ponce, the Board of Directors of [respondent corporation] negotiated with Forro and Radan for the latter to sell units/lots of Villaluz II Subdivision, and to help obtain a financier who would finance for the expenses for the reconstitution of the lost title of the Fourth Estate Subdivision situated [in] Sucat, Paranaque City. Shortly thereafter, these two men resigned from [respondent corporation] as agents, after they manipulated the signing of x x x said 'Deed of Undertaking' by Luz Baylon Ponce on February 11, 1997. The latter is an old woman 80 years of age. She is weak, has x x x poor sight, and is feeble in her mental ability. Forro and Radan inserted the 'Deed of Undertaking' among the papers intended for application for reconstitution of [respondent corporation's] title which these men caused Luz Baylon Ponce to sign, and she unknowingly signed the 'Deed of Undertaking.' x x x." [10]

In the Motion, respondent sought the dismissal of the Complaint on the grounds of (1) improper venue, (2) lack of jurisdiction over the subject matter, and (3) nonpayment of the proper docket fees. Specifically, it contended:

"8. That venue is improperly laid

xxx xxx xxx

"(b) In other words, the present case filed by [petitioner] is for her recovery (and for her companions) of 36.5% of [respondent corporation's] land (Fourth Estate Subdivision) or her interest therein. x x x therefore, x x x the present case filed x x x is a real action or an action in rem.

"(c) x x x [Following] Section 1, Rule 4 of the Rules of Court, as amended x x x the present case should have been filed by [petitioner] with the proper court in Paranaque City which has jurisdiction over the x x x Fourth Estate Subdivision because said subdivision is situated in Paranaque City. Since [petitioner] filed the present case with this x x x [c]ourt in Pasig City, she chose a wrong venue x x x.

xxx xxx xxx

"9. That the [c]ourt has no jurisdiction over the subject matter of the claim

xxx xxx xxx

“(c) x x x Wenifredo P. Forro, Nicanor Radan, Sr. and Atty. Prospero A. Anave are not named as plaintiffs in the complaint. [Petitioner] x x x is not named as representative of Forro, Radan and Anave by virtue of a Special Power of Attorney or other formal written authority. According to the Rules, where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest (Sec. 3, Rule 3, Rules of Court, as amended x x x).

xxx xxx xxx

“10. That a condition precedent for filing the claim has not been complied with

xxx xxx xxx

(b) Obviously, [petitioner] has not paid the docket or filing fees on the value of her land claim x x x. Thirty-six percent (36%) x x x is P180,000,000.00, x x x.”[11]

Ruling of the Trial Court

The RTC ruled that the allegations in the Complaint show that its primary objective was to recover real property. Equally important, the prayer was to compel respondent to execute the necessary deeds of transfer and conveyance of a portion of the property corresponding to 36.5 percent of its total area or, in the alternative, to hold respondent liable for the value of the said portion, based on the prevailing market price. The RTC further ruled that, since the suit would affect the title to the property, it should have been instituted in the trial court where the property was situated.[12]

Furthermore, the action was filed only by petitioner. There was no allegation that she had been authorized by Forro, Radan and Anave to represent their respective shares in the compensation.

Finally, since this case was an action in rem, it was imperative for petitioner to pay the appropriate docket or filing fees equivalent to the pecuniary value of her claim, a duty she failed to discharge. Consequently, following *Manchester Development Corp. v. Court of Appeals*,[13] the trial court never acquired jurisdiction over the case.

Hence, this Petition.[14]

Issues

In her Memorandum, petitioner phrases the issue in this wise:

“Whether or not the dismissal of the [C]omplaint was in accordance with the pertinent law and jurisprudence on the matter.”[15]

She argues that the RTC erred in dismissing her Complaint on the grounds of (1) improper venue, (2) non-joinder of necessary parties, and (3) non-payment of proper docket fees.

This Court’s Ruling

The Petition is meritorious.

First Issue:

Proper Venue

Maintaining that the action is in personam, not in rem, petitioner alleges that the venue was properly laid. The fact that “she ultimately sought the conveyance of real property” not located in the territorial jurisdiction of the RTC

of Pasig is, she claims, an anticipated consequence and beyond the cause for which the action was instituted.

On the other hand, the RTC ruled that since the primary objective of petitioner was to recover real property -- even though her Complaint was for specific performance and damages -- her action should have been instituted in the trial court where the property was situated, in accordance with *Commodities Storage & Ice Plant Corp. v. Court of Appeals*.^[16]

We agree with petitioner. Sections 1 and 2, Rule 4 of the Rules of Court provide an answer to the issue of venue.^[17] Actions affecting title to or possession of real property or an interest therein (real actions), shall be commenced and tried in the proper court that has territorial jurisdiction over the area where the real property is situated. On the other hand, all other actions, (personal actions) shall be commenced and tried in the proper courts where the plaintiff or any of the principal plaintiffs resides or where the defendant or any of the principal defendants resides.

In *Commodities Storage* cited earlier, petitioner spouses obtained a loan secured by a mortgage over their land and ice plant in Sta. Maria, Bulacan. Because they had failed to pay the loan, the mortgage was foreclosed and the ice plant auctioned. Before the RTC of Manila, they sued the bank for damages and for the fixing of the redemption period. Since the spouses ultimately sought redemption of the mortgaged property, the action affected the mortgage debtor's title to the foreclosed property; hence, it was a real action.^[18] Where the action affects title to the property, it should be instituted in the trial court where the property is situated.^[19]

In *National Steel Corp. v. Court of Appeals*,^[20] the Court held that "an action in which petitioner seeks the execution of a deed of sale of a parcel of land in his favor x x x has been held to be for the recovery of the real property and not for specific performance since his primary objective is to regain the ownership and possession of the parcel of land."

However, in *La Tondeña Distillers, Inc. v. Ponferrada*,^[21] private respondents filed an action for specific performance with damages before the RTC of Bacolod City. The defendants allegedly reneged on their contract to sell to them a parcel of land located in Bago City - - a piece of property which the latter sold to petitioner while the case was pending before the said RTC. Private respondent did not claim ownership but, by annotating a notice of lis pendens on the title, recognized defendants' ownership thereof. This Court ruled that the venue had properly been laid in the RTC of Bacolod, even if the property was situated in Bago.

In *Siasoco v. Court of Appeals*,^[22] private respondent filed a case for specific performance with damages before the RTC of Quezon City. It alleged that after it accepted the offer of petitioners, they sold to a third person several parcels of land located in Montalban, Rizal. The Supreme Court sustained the trial court's order allowing an amendment of the original Complaint for specific performance with damages. Contrary to petitioners' position that the RTC of Quezon City had no jurisdiction over the case, as the subject lots were located in Montalban, Rizal, the said RTC had jurisdiction over the original Complaint. The Court reiterated the rule that a case for specific performance with damages is a personal action which may be filed in a court where any of the parties reside.

A close scrutiny of *National Steel* and *Ruiz* reveals that the prayers for the execution of a Deed of Sale were not in any way connected to a contract, like the Undertaking in this case. Hence, even if there were prayers for the execution of a deed of sale, the actions filed in the said cases were not for specific performance.

In the present case, petitioner seeks payment of her services in accordance with the undertaking the parties signed. Breach of contract gives rise to a cause of action for specific performance or for rescission.^[23] If petitioner had filed an action in rem for the conveyance of real property, the dismissal of the case would have been proper on the

ground of lack of cause of action.

Second Issue:

Non-Joinder of Proper Parties

Petitioner claims that she was duly authorized and empowered to represent the members of her group and to prosecute their claims on their behalf via a Special Power of Attorney executed by Forro, Radan and Anave. Besides, she argues that the omission of her companions as plaintiffs did not prevent the RTC from proceeding with the action, because whatever judgment would be rendered would be without prejudice to their rights. In the alternative, she avers that the trial court may add or drop a party or parties at any stage of the action and on such terms as are just.

The RTC ruled that there was no allegation anywhere in the records that petitioner had been authorized to represent Forro, Radan and Anave, who were real parties-in-interest with respect to their respective shares of the 36.5 percent claim. Such being the case, the trial court never acquired jurisdiction over the subject matter of their claims.

Again, we side with petitioner. Neither a misjoinder nor a non-joinder of parties is a ground for the dismissal of an action. Parties may be dropped or added by order of the court, on motion of any party or on the court's own initiative at any stage of the action.[24] The RTC should have ordered the joinder of such party, and noncompliance with the said order would have been ground for dismissal of the action.

Although the Complaint prayed for the conveyance of the whole 36.5 percent claim without impleading the companions of petitioner as party-litigants, the RTC could have separately proceeded with the case as far as her 20 percent share in the claim was concerned, independent of the other 16.5 percent. This fact means that her companions are not indispensable parties without whom no final determination can be had.[25] At best, they are mere necessary parties who ought to be impleaded for a complete determination or settlement of the claim subject of the action.[26] The non-inclusion of a necessary party does not prevent the court from proceeding with the action, and the judgment rendered therein shall be without prejudice to the rights of such party.[27]

Third Issue:

Correct Docket Fees

Petitioner insists that the value of the real property, which was the subject of the contract, has nothing to do with the determination of the correct docket or filing fees.

The RTC ruled that although the amount of damages sought had not been specified in the body of the Complaint, one can infer from the assessed value of the disputed land that it would amount to P50 million. Hence, when compared to this figure, the P210 paid as docket fees would appear paltry.

We hold that the trial court and respondent used technicalities to avoid the resolution of the case and to trifle with the law. True, Section 5, Rule 141 of the Rules of Court requires that the assessed value of the real estate, subject of an action, should be considered in computing the filing fees. But the Court has already clarified that the Rule does not apply to an action for specific performance,[28] which is classified as an action not capable of pecuniary estimation.[29]

Besides, if during the course of the trial, petitioner's 20 percent claim on the Fourth Estate Subdivision can no longer be satisfied and the payment of its monetary equivalent is the only solution left, *Sunlife Insurance Office, Ltd. v. Asuncion*[30] holds as follows: "Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the

applicable prescriptive or reglementary period.”

WHEREFORE, the Petition is hereby GRANTED, and the assailed Orders REVERSED and SET ASIDE. The case is REMANDED to the court of origin which is ordered to PROCEED with deliberate speed in disposing of the case. No costs.

SO ORDERED.

Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, (Chairman), J., abroad, on official leave.

[1] Presided by Judge Danilo B. Pine.

[2] Rollo, p. 16.

[3] Ibid., p. 17.

[4] Agreement (annex “C”); rollo, pp. 52-53.

[5] Rollo, pp. 52-53.

[6] Annex “D”; rollo, p. 54.

[7] Deed of Undertaking (Annex “E”); rollo, pp. 55-56.

[8] Letter signed by Atty. Prospero A. Anave (Annex “J”) rollo, pp. 67-68.

[9] Complaint, Annex “E”; rollo, pp. 39-41.

[10] Motion to Dismiss (Annex “F”); rollo, pp. 76-78.

[11] Annex “F”; rollo, pp. 78-81.

[12] *Commodities Storage & Ice Plant Corp. v. Court of Appeals*, 274 SCRA 439, June 19, 1997.

[13] 149 SCRA 562, May 7, 1987.

[14] This case was deemed submitted for resolution upon this Court’s receipt on November 9, 2001 of the Memorandum for respondent, signed by Atty. Francisco E. Antonio.

[15] Memorandum for petitioner, signed by Atty. Prospero A. Anave, p. 5; rollo, p. 116.

[16] 274 SCRA 439, June 19, 1997.

[17] “SEC. 1. Venue of real actions. - Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.”

xxx xxx xxx

“SEC.2. Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.”

[18] *Commodities Storage & Ice Plant Corp. v. Court of Appeals*, supra, p. 450.

[19] Ibid., p. 451.

[20] 302 SCRA 522, 529, February 2, 1999, per Mendoza, J.

[21] 264 SCRA 540, 544, November 21, 1996.

[22] 303 SCRA 186, 196, February 15, 1999.

[23] Art. 1165 & 1191 of the Civil Code; Davao Abaca Plantation Company, Inc. v. Dole Philippines, Inc., 346 SCRA 682, 688, December 1, 2000. See also Villamil v. Court of Appeals, 208 SCRA 643, 650-651, May 8, 1992; Robleza v. Court of Appeals, 174 SCRA 354, 363, June 28, 1989.

[24] § 11, Rule 3 of the Rules of Court, provides: “SEC. 11. Misjoinder and non-joinder of parties. - Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.”

[25] §7, Rule 3 of the Rules of Court, states: “SEC 7. Compulsory joinder of indispensable parties. - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.”

[26] §8, Rule 3 of the Rules of Court, provides: “SEC. 8. Necessary party. – A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.”

[27] Agro Conglomerates, Inc. v. Court of Appeals, 348 SCRA 450, 460, December 18, 2000.

[28] Ayala Corporation v. Madayag, 181 SCRA 687, 689, January 30, 1990.

[29] Amorganda v. Court of Appeals, 166 SCRA 203, 211, September 30, 1988.

[30] 170 SCRA 274, 285, February 13, 1989.

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