FIRST BANCORP, INC., PETITIONER, VS. HONORABLE COURT OF APPEALS AND JANE THOMAS LIGHTNER, RESPONDENTS.

G.R. NO. 151132. June 22, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The First Bancorp, Inc. (Bancorp for brevity) is the registered owner of a parcel of land located in Alabang, Muntinlupa covered by Transfer Certificate of Title No. 201126 issued by the Registry of Deeds on May 19, 1995.[1]

On October 10, 1997, Jane Thomas Lightner, an American citizen who resided in California, U.S.A., filed a Complaint against Bancorp with the Regional Trial Court (RTC) of Muntinlupa City with the following allegations:

> - Plaintiff is of legal age, widowed, American citizen, and a resident of California, United States. She may be served with process in this case through undersigned counsel.
>
> - Defendant is a corporation created under the laws of the Philippines with address at c/o Carpio Villaraza & Cruz, 5[th] Floor, LTA Building, 118 Perea Street, Legaspi Village, Makati City, Metro Manila, where it may be served with processes of the Honorable Court.
>
> 2.1. According to defendant's General Information Sheet dated 23 September 1997 filed with the Securities and Exchange Commission, the corporate officers of defendant who may be served with the summons in behalf of defendant are:
>
> Atty. F. Arthur L. Villaraza - Chairman/President
>
> Atty. Rafael Antonio M. Santos - Director
>
> Atty. Jose M. Jose - Director/Corporate Secretary
>
> Atty. Augusto A. San Pedro, Jr. - Director
>
> Atty. Alejandro Alfonso E. Navarro - Director
>
> Venus C. Catacutan - Treasurer
>
> A copy of defendant's General Information Sheet dated 23 September 1997 is attached hereto as Annex "A."
>
> - Plaintiff is the widow of Donald Clifford Lightner, Jr., an American citizen who passed away in Hongkong on 29 June 1997. They were married on 24 April 1977 in the United States.
>
> 3.1. Plaintiff and Donald C. Lightner, Jr. never obtained a valid decree of divorce, legal separation, separation of properties, or dissolution of the conjugal partnership.
>
> - Defendant is the registered owner of a parcel of land and house and other improvements with address at 144

San Juanico Street, Ayala Alabang Village, Muntinlupa, Metro Manila, covered by Transfer Certificate of Title No. 201126 of the Register of Deeds of the City of Makati, hereinafter referred to as the "Property."

- Notwithstanding the fact that title to the Property is registered in the name of defendant, the Property in actuality belongs to the estate of Donald C. Lightner, Jr. and plaintiff jointly.

5.1. The Property was acquired with conjugal or community funds and therefore is a conjugal or community asset.

5.2. The Property was used exclusively as the primary residence of Donald C. Lightner, Jr. and his mistress Aida Villaluz until his death. Ms. Villaluz continues to reside on the Property.

- In an attempt to divest and defraud plaintiff out of her 50% undivided interest in the Property (or in the conjugal/community funds used to acquire the Property) as well as her compulsory inheritance from his estate's 50% undivided interest therein, Donald C. Lightner, Jr. caused the title to the Property to be registered in the name of defendant.

6.1. Defendant is apparently only a holding corporation owned by nominees. All of its stockholders, directors and officers are lawyers and, in the case of Venus C. Catacutan, an accounting staff person of the law firm of Carpio, Villaraza & Cruz. The total capitalization of defendant is only P100,000 as of 23 September 1997, so it could not have purchased the Property (see Annex "A").[2]

She prayed that, after due proceedings, judgment be rendered in her favor, as follows:

WHEREFORE, it is respectfully prayed that judgment be rendered declaring that defendant holds a 50% undivided interest in the property as trustee and in trust for the benefit of plaintiff.

Other relief just and equitable in the premises are also prayed for.[3]

Bancorp filed a Motion to Dismiss the complaint on the following grounds:

I

THE COMPLAINT STATES NO CAUSE OF ACTION FOR THE DECLARATION OF PLAINTIFF'S ALLEGED FIFTY PERCENT UNDIVIDED INTEREST OVER THE SUBJECT PROPERTY CONSIDERING THAT, UNDER THE CONSTITUTION, PLAINTIFF, WHO IS AN AMERICAN CITIZEN, CANNOT OWN REAL PROPERTY IN THE PHILIPPINES.

II

A CONDITION PRECEDENT FOR THE FILING OF THE CLAIM ASSERTED IN THE COMPLAINT HAS NOT BEEN COMPLIED WITH CONSIDERING THAT THE ALLEGED CONJUGAL PARTNERSHIP HAS NOT YET BEEN LIQUIDATED IN THE PROPERTY ESTATE PROCEEDINGS.

III

THE HONORABLE COURT HAS NOT ACQUIRED JURISDICTION OVER THE DEFENDANT CONSIDERING THAT THE SUMMONS IN THE INSTANT CASE WERE IMPROPERLY SERVED.

IV

THE HONORABLE COURT HAS NOT ACQUIRED JURISDICTION OVER THE INSTANT CASE CONSIDERING THAT PLAINTIFF FAILED TO ALLEGE THE VALUE OF THE REAL PROPERTY INVOLVED IN THE INSTANT REAL ACTION AND FAILED TO PAY THE PROPER DOCKET FEES.[4]

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Lightner opposed the motion, contending that she had paid the requisite docket fees. Contrary to the allegation of the defendant, her action was not a real action; hence, she need not allege the assessed value of the property. In any event, even if the amount she paid as docket fees was insufficient, she should be allowed a reasonable time to pay the deficiency. She further claimed that the liquidation of their conjugal partnership properties is not a condition precedent to the filing of her complaint because her action is against defendant, a third party who is an outsider to her husband's estate. Moreover, her claimed right to a declaration of a constructive trust in her favor to enable her to sell her 50% conjugal partnership share in the proceeds of the sale is not a violation of the Constitution. She pointed out that when a favorable judgment is rendered in her favor, she would still be compelled to sell the property to a qualified Filipino. Thus, the court's mere declaration of Bancorp as trustee is not prohibited by the Constitution. She further alleged that Bancorp was estopped from raising such a defense against her based on the doctrine of pari delicto.

On January 20, 1996, the RTC issued an Order denying the motion of Bancorp,[5] prompting it to file a motion for reconsideration[6] on the following grounds:

> I
>
> WITH DUE RESPECT, THE PERFUNCTORY DENIAL OF DEFENDANT'S MOTION TO DISMISS IN THE ORDER DATED 20 JANUARY 1998 VIOLATES SECTION 3, RULE 16 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE AS IT FAILED TO STATE CLEARLY AND DISTINCTLY THE REASONS THEREFOR.
>
> II
>
> WITH DUE RESPECT, THE ORDER DATED 20 JANUARY 1998 DEPRIVED DEFENDANT OF DUE PROCESS CONSIDERING THAT ITS RIGHT TO FILE A REPLY TO PLAINTIFF'S OPPOSITION DATED 14 JANUARY 1998 WHICH WAS GRANTED TO DEFENDANT IN A PREVIOUS ORDER DATED 05 DECEMBER 1997 WAS ARBITRARILY CURTAILED.
>
> III
>
> WITH DUE RESPECT, THE HONORABLE COURT SHOULD RECONSIDER AND SET ASIDE THE ORDER DATED 20 JANUARY 1998 AND INSTEAD ORDER THE DISMISSAL OF THE INSTANT CASE, CONSIDERING THAT:
>
> - THE COMPLAINT STATES NO CAUSE OF ACTION FOR THE DECLARATION OF PLAINTIFF'S ALLEGED FIFTY PERCENT UNDIVIDED INTEREST OVER THE SUBJECT PROPERTY SINCE SUCH A CLAIM BY AN ALIEN IS PROSCRIBED UNDER THE CONSTITUTION.
>
> - ASSUMING THAT THE SUBJECT PROPERTY BELONGS TO THE ALLEGED CONJUGAL PARTNERSHIP BETWEEN PLAINTIFF AND THE LATE DONALD C. LIGHTNER, JR., THE LIQUIDATION OF THE ALLEGED CONJUGAL PARTNERSHIP IN THE PROPER ESTATE PROCEEDINGS IS A CONDITION PRECEDENT FOR THE FILING OF THE CLAIM ASSERTED IN THE COMPLAINT.
>
> - THE HONORABLE COURT HAS NOT ACQUIRED JURISDICTION OVER THE PERSON OF DEFENDANT SINCE THE SUMMONS IN THE INSTANT CASE WAS IMPROPERLY SERVED.
>
> - THE HONORABLE COURT HAS NOT ACQUIRED JURISDICTION OVER THE INSTANT CASE SINCE PLAINTIFF FAILED TO ALLEGE IN HER COMPLAINT THE VALUE OF THE REAL PROPERTY INVOLVED IN THE INSTANT REAL ACTION AND FAILED TO PAY THE PROPER DOCKET FEES AS REQUIRED BY THE RULES OF COURT.[7]

Lightner opposed the motion.[8] This time, however, the RTC issued an Order on April 14, 1998 granting the motion of Bancorp, and ordered the complaint dismissed. The trial court ratiocinated that:

> [a]s a rule, the allegation set forth in the Complaint and not the prayer for relief that determines the nature of the cause of action of the plaintiff. In the complaint, it is alleged that plaintiff is an American Citizen and that the subject property purportedly belongs to the plaintiff and the estate of the late Donald C. Lightner, Jr. The relief prayed for in the complaint dated 08 October 1997 is premised on an alleged right of ownership being claimed by the plaintiff as a consequence of the alleged acquisition of the Subject Property purportedly using the conjugal funds of the plaintiff and the late Donald C. Lightner, Jr., who are both aliens. Consequently, it is clear from the allegations in the Complaint that plaintiff traces her alleged right to the Subject Property to an unlawful conveyance which is clearly proscribed under the Constitution.
>
> "Section 7, Article XII of the Constitution categorically provides the following prohibition:Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire lands of the public domain."

Accordingly, while plaintiff is ostensibly asking for a mere declaration of plaintiff's alleged fifty percent (50%) undivided interest over the Subject Property as stated in the prayer of the Complaint dated 08 October 1997, plaintiff in reality is demanding the declaration of the Subject Property as owned jointly by her and the estate of the late Donald C. Lightner, Jr. which is clearly prohibited under the Constitution.

Plaintiff, who is an alien, cannot even assert a claim for a fifty percent (50%) undivided interest over the Subject Property as her alleged conjugal share.

Plaintiff states that liquidation of the conjugal partnership in the estate proceeding is not a precedent for the filing of the suit.

It has been held that the declaration of a fifty percent (50%) undivided interest over a parcel of land is tantamount to the conferment of absolute title thereto, including the right to dispose and convey title to said property. As held in the case of Meralco v. Viardo, 5 SCRA 859-868 (1962):

> x x x The other one-half undivided interest of the latter was not in litigation and therefore the trial court correctly held that Pilar Belmonte, as the owner of this undivided one-half interest, had a right to sell it and convey absolute title thereto or to parts thereof. x x x

In the case of Suyon v. Collantes, 69 SCRA 514-520 (1976), the Supreme Court ruled that in determining whether a Complaint sufficiently states a cause of action, assuming the truth of the allegations of fact therein, the Honorable Court should first determine whether it could render a valid judgment in accordance with the prayer in the Complaint. In the instant case, plaintiff prays that she be declared the owner of the fifty percent (50%) undivided interest in the Subject Property. For the Court to render judgment in favor of plaintiff as prayed for in her Complaint, it is enough that the Subject Property be shown to belong to her and the late Donald C. Lightner, Jr. It must also be established that she is qualified under the Constitution and our laws to own or hold the interest she claims in the Subject Property. In the instant case, the very allegations of her Complaint show that she is disqualified, being an alien, from being declared the owner of fifty percent (50%) undivided interest in the Subject Property. For this reason, plaintiff's Complaint clearly states no cause of action.

Plaintiff alleges that the conjugal partnership must be liquidated in an estate proceeding applies only when the suit is filed against the estate for the recovery of a specific asset or property. It does not apply to a suit against a third party who is an outsider to the estate. In this action, plaintiff has sued a third party to declare it as holding title to the property in constructive trust for plaintiff.

Defendant, however, states that, Article 129 of the Family Code (Executive Order 209), the conjugal partnership

must first be liquidated before the plaintiff can assert her alleged claim to any specific conjugal partnership asset because it is in the liquidation of the alleged conjugal partnership that a determination is made as to which properties pertain to the conjugal partnership and what constitutes the net remainder thereof to which the surviving spouse may become entitled.

That prior to the liquidation, plaintiff cannot assert ownership over specific conjugal assets. What the plaintiff will eventually become entitled to would be the net remainder of the alleged conjugal partnership after the payment of all the debts and obligations of the alleged conjugal partnership and the distribution of the exclusive paraphernal properties of each of the spouses.

In the instant case, even before the alleged conjugal partnership could be liquidated pursuant to Article 129 of the Family Code, plaintiff is already asserting a claim to her alleged conjugal share over a specific conjugal property, on the erroneous assumption that Subject Property supposedly constitutes conjugal property. Clearly, plaintiff's claim over the subject property, even assuming the same to be conjugal, is premature as she can only be entitled to the net remainder of the alleged conjugal partnership under the law. At present, the net remainder of the alleged partnership has not yet been determined considering that the condition precedent of liquidating the alleged conjugal partnership has yet to be complied with. Thus, plaintiff cannot assert her alleged claim for a supposed fifty (50%) undivided interest over the Subject Property which she claims to be part of the conjugal partnership assets.

Considering the foregoing discussions, this Court finds it is no longer necessary to discuss further the remaining issues raised by both parties as it is the opinion of this Court that the above mentioned contention would be sufficient enough for this Court to finally determine the assertion of the parties.[9]

Lightner filed a notice of appeal to the Court of Appeals (CA), arguing that the questioned order is contrary to the relevant facts and the applicable law and jurisprudence.[10] For its part, Bancorp filed a motion to dismiss the appeal on the ground that:

> THE HONORABLE COURT HAS NO JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT APPEAL WHICH INVOLVES PURE QUESTIONS OF LAW AND IS PROPERLY COGNIZABLE BY THE SUPREME COURT; HENCE, THE INSTANT APPEAL SHOULD BE DISMISSED OUTRIGHT.[11]

Lightner opposed the Motion to Dismiss Appeal, claiming that her appeal involved both questions of law and questions of facts.[12]

On October 19, 2000, the CA resolved to deny the Motion to Dismiss Appeal filed by Bancorp.[13] The latter received a copy of the resolution on October 30, 2000, and moved for its reconsideration on November 13, 2000.

Lightner opposed the motion, insisting that questions of fact or law may be raised on appeal to the CA by writ of error. She maintained that Bancorp indulged in speculations when it averred in its Motion to Dismiss the Appeal that her appeal would only raise questions of law, that such an argument would have no basis until the issues have actually been delineated and the assignment of errors stated in her brief as appellant.

Meanwhile, Lightner filed her Brief[14] dated March 22, 2001 in which she averred that:

> I
>
> The lower court erred in finding that the complaint states no cause of action.
>
> II
>
> The lower court erred in finding that the complaint was filed prematurely.[15]

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Bancorp filed a Supplemental Motion for Reconsideration on the ground that only legal issues had been raised in the appellant's brief, hence, the appeal should be dismissed.

On March 21, 2001, the appellate court resolved to deny the motion for reconsideration of its October 19, 2000 Resolution filed by Bancorp.[16] The CA held that under Section 15, Rule 44 of the Rules of Court, the appellant may raise either questions of fact or law.

On October 26, 2001, the CA denied the Supplemental Motion for Reconsideration filed by Bancorp.[17] The latter received a copy of this resolution on November 16, 2001, and thereafter filed its Brief as appellee ad cautelam in the CA, alleging that

> - The Honorable Court Has No Jurisdiction To Take Cognizance Of The Instant Appeal Which Involves Pure Questions Of Law And Is Properly Cognizable By The Supreme Court; Hence, The Instant Appeal Should Be Dismissed Outright.
>
> - Assuming Arguendo That The Honorable Court Has Jurisdiction Over The Instant Appeal, The Trial Court Correctly Ruled That Plaintiff-Appellant Lightner's Complaint States No Cause Of Action For The Declaration Of Her Alleged Fifty Percent Undivided Interest Over The Subject Property Since Such A Claim By An Alien Is Proscribed Under The Constitution; And Hence, Should Be Dismissed.
>
> - The Trial Court Correctly Ruled That Plaintiff-Appellant Lightner's Complaint Was Prematurely Filed And, Hence, Should Be Dismissed Considering That Even Assuming That The Subject Property Belongs To The Alleged Conjugal Partnership Between Plaintiff-Appellant Lightner And The Late Donald C. Lightner, Jr., The Liquidation Of Their Alleged Conjugal Partnership In The Proper Estate Proceedings Is A Condition Precedent For The Filing Of The Claim Asserted In The Complaint.[18]

On January 11, 2002, Bancorp, now petitioner, filed the instant Petition for Certiorari and Prohibition with this Court on the following allegations:

> THE RESPONDENT COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT ASSUMED JURISDICTION AND TOOK COGNIZANCE OF THE APPEAL OF PRIVATE RESPONDENT LIGHTNER WHEN IT CLEARLY AND PLAINLY HAD NO JURISDICTION OVER IT AS THE SAID APPEAL INVOLVES PURE QUESTIONS OF LAW AND IS WITHIN THE EXCLUSIVE JURI[S]DICTION OF THE HONORABLE COURT.[19]

To buttress this claim, petitioner reiterates its arguments in the CA, in support of its motion to dismiss the appeal of respondent.

For her part, respondent avers that, under Section 1, Rule 41 of the Rules of Court, the mode of appeal from all final orders of the trial court is by writ of error as provided in Section 2(a), Rule 42 of the Rules of Court. Conformably with Section 15, Rule 44, questions of fact or law or both may be raised on appeal in the CA. In any event, respondent asserts, her appeal to the CA raises questions of fact, to wit: (1) whether the conjugal partnership has been liquidated; and (2) whether her complaint states a cause of action. To support her contention, respondent cites the rulings of this Court in Heirs of Coscolluela, Sr. v. Rico General Insurance Corporation[20] and PCGG v. Gorospe.[21]

Respondent maintains that her appeal should not be dismissed based solely on technicalities.

The petition is meritorious.

The order of the trial court dismissing the complaint of respondent (plaintiff below) on the ground that it is premature and states no cause of action is final because it terminated the proceedings so that nothing more can be

done in the trial court. The order ended the litigation.[22] There are two modes of appeal from a final order of the trial court in the exercise of its original jurisdiction - (1) by writ of error under Section 2(a), Rule 41 of the Rules of Court if questions of fact or questions of fact and law are raised or involved; or (2) appeal by certiorari under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved:

> Sec. 2. Modes of appeal. -
>
> (a) Ordinary appeal. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
>
> x x x x
>
> (c) Appeal by certiorari. - In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.[23]

The period to appeal by writ of error is provided in Section 3, Rule 41 of the Rules of Court:

> Sec. 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Under Section 5 of the same rule, "the notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal."

On the other hand, an appeal by certiorari is via a petition for review to be filed with the Supreme Court within fifteen (15) days from notice of the final order or resolution appealed from or of the dismissal of petitioner's motion for new trial or reconsideration filed in due time after notice of the final order or resolution:

> Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.[24]

If the aggrieved party appeals by writ of error under Rule 41 of the Rules of Court to the CA and it turns out, from the brief of appellant, that only questions of law are raised, the appeal shall be dismissed:

> Sec. 2. Dismissal of improper appeal to the Court of Appeals. - An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.
>
> An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.[25]

The nature of the issues to be raised on appeal can be gleaned from the appellant's notice of appeal filed in the trial court and in his or her brief as appellant in the appellate court.[26]

The provision relied upon by respondent, Section 15, Rule 44 of the Rules of Court, reads:

> Sec. 15. Questions that may be raised on appeal. - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

This rule, however, does not relate to the nature of the issues that may be raised on appeal by the aggrieved party, whether issues of fact or issues of law, or the mode of appeal of the aggrieved party from a final order or resolution of the trial court in the exercise of its original jurisdiction; it merely provides the nature of the issues appellant may include in his assignment of error incorporated in his Brief as appellant. It may happen that the appellant may have raised in the trial court errors of fact or law or both, and need not include all said issues in his appeal in the appellate court. The appellant has the right to choose which issues of law he or she may raise in the CA in addition to factual issues already raised.

A question of fact exists when a doubt or difference arises as to the truth or falsity of alleged facts. If the query requires a reevaluation of the credibility of witnesses or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. On the other hand, there is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances.[27] Ordinarily, the determination of whether an appeal involves only questions of law or both questions of law and fact is best left to the appellate court.[28] All doubts as to the correctness of the conclusions of the appellate court will be resolved in favor of the CA unless it commits an error or commits a grave abuse of discretion.[29]

In the present case, respondent appealed the order of the trial court, which dismissed her complaint on the ground that it failed to state a cause of action against petitioner (defendant therein), and for prematurity, as the conjugal partnership between her and her deceased husband had not yet been liquidated prior to its filing.

Petitioner maintains that the trial court acted in accord with law when it dismissed the complaint. While it admits that when it filed its motion to dismiss on the ground that the complaint of respondent states no cause of action, it theoretically admitted the truth of the factual and material allegations in the complaint and not mere inferences or conclusions from facts not stated; nor conclusions of law; nor matters of evidence; nor surplusage and irrelevant matter.[30] Petitioner agrees that the court may not inquire into the truth of the allegations and find them to be false before a hearing is had on the merits of the case; and it is improper to inject in the allegations of the complaint facts not alleged or proved, and use these as basis for said motion.[31] The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of plaintiff. A complaint may also be dismissed for failure of plaintiff to comply with a condition precedent. There can be no cause of action for filing a complaint in court unless the condition precedent has been complied with. Performance or fulfillment of all conditions precedent whether proscribed by statement or by agreement of the parties or implied by law upon which a right of action depends must be sufficiently alleged.[32]

With the foregoing premises, we agree with petitioner's contention that a question of whether or not a complaint states a cause of action against defendant or that the action is premature is one of law. The determination thereof is one of law and not of facts.[33] Indeed, in China Road and Bridge Corporation v. Court of Appeals,[34] the Court ruled that:

> In a motion to dismiss based on failure to state a cause of action, there cannot be any question of fact or "doubt or difference as to the truth or falsehood of facts," simply because there are no findings of fact in the first place. What the trial court merely does is to apply the law to the facts as alleged in the complaint, assuming such allegations to be true. It follows then that any appeal therefrom could only raise questions of law or

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> "doubt or controversy as to what the law is on a certain state of facts." Therefore, a decision dismissing a complaint based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. One is the legal and logical opposite of the other.[35]

The Court further ruled that a review of a finding of lack of cause of action based on the factual and material allegations of the complaint would only limit itself to whether the law was properly applied given the facts alleged in the complaint. What would inevitably arise from such a review are pure questions of law, and not questions of fact:

> JADEBANK in its Appellant's Brief raised the following questions, which it erroneously designated as questions of fact, in an attempt to place its appeal within the jurisdiction of the Court of Appeals:4.1.1. Whether or not the amended complaint together with the Annexes attached and forming an integral part thereof, states a sufficient cause of action against the defendant-appellee;
>
> 4.1.2. Whether or not there was an unwarranted reversal of the Honorable Regional Trial Court's Orders stating that the complaint states a sufficient cause of action;
>
> 4.2.1. Whether or not the Motion to Dismiss the complaint can be considered also as a Motion to Dismiss the Amended Complaint.

We fail to see how these issues raised by JADEBANK could be properly denominated questions of fact. The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. Applying the test to the instant case, it is clear that private respondent raises pure questions of law which are not proper in an ordinary appeal under Rule 41, but should be raised by way of a petition for review on certiorari under Rule 45.

We agree with private respondent that in a motion to dismiss due to failure to state a cause of action, the trial court can consider all the pleadings filed, including annexes, motions and the evidence on record. However in so doing, the trial court does not rule on the truth or falsity of such documents. It merely includes such documents in the hypothetical admission. Any review of a finding of lack of cause of action based on these documents would not involve a calibration of the probative value of such pieces of evidence but would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting documents. Therefore, what would inevitably arise from such a review are pure questions of law, and not questions of fact.[36]

Respondent cannot find solace in the ruling of this Court in Heirs of Yaptinchay v. Del Rosario.[37] In that case, the trial court dismissed the complaint on the ground, inter alia, that it failed to state a cause of action and that plaintiffs had their right of action against defendants because they had not established their status as heirs. Instead of appealing the order of the court, plaintiff filed a special civil action for certiorari in this Court under Rule 65. The Court dismissed the petition, declaring that the proper remedy was to appeal the order and not file a petition for certiorari.

It must be stressed that an order of dismissal, be it right or wrong, is a final order which is subject to appeal, not the proper subject of certiorari. Where appeal is available as a remedy, certiorari will not lie. In Meneses v. Court of Appeals,[38] the Court reiterated the rule that:

> It must also be stressed that the trial court's order of 5 June 1992 dismissing the petitioner's complaint was, whether it was right or wrong, a final order because it had put an end to the particular matter resolved, or settled definitely the matter therein disposed of and left nothing more to be done by the trial court except the execution of the order. It is a firmly settled rule that the remedy against such order is the remedy of appeal and not certiorari. That appeal may be solely on questions of law, in which case it may be taken only to this Court;

> or on questions of fact and law, in which case the appeal should be brought to the Court of Appeals. Pursuant to Murillo v. Consul, the appeal to this Court should be by petition for review on certiorari in accordance with Rule 45 of the Rules of Court.
>
> In the instant case then, if the petitioner had chosen to appeal from the dismissal order of the trial court solely on questions of law, then he should have filed a petition for review on certiorari with this Court. If he wanted to raise in his appeal both questions of law and of fact, then he should have pursued the remedy of an ordinary appeal to the Court of Appeals and not by way of a petition for review under Rule 45. The Court of Appeals did not then commit any reversible error when it dismissed the petition for review of the petitioner in CA-G.R. SP No. 29328.[39]

Thus, the appeal of respondent to the CA by writ of error is a wrong mode of appeal; consequently, the appeal should have been dismissed.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Resolutions of the Court of Appeals are SET ASIDE. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 60-62.

[2] Id. at 49-51.

[3] Id. at 51.

[4] Id. at 63-64.

[5] Id. at 95.

[6] Id. at 96-124.

[7] Id. at 96-98.

[8] Id. at 125-139.

[9] Id. at 140-143.

[10] Id. at 144-145.

[11] Id. at 146.

[12] Id. at 204-213.

[13] Id. at 42-43.

[14] Id. at 311-337.

[15] Id. at 311-347.

[16] Id. at 45.

[17] Id. at 47-48.

[18] Id. at 356-357.

[19] Id. at 23.

[20] G.R. No. 84628, November 16, 1989, 179 SCRA 511.

[21] Minute Resolution dated October 19, 1998 in G.R. No. 135316.

[22] Metropolitan Manila Development Authority v. Jancom Environmental Corporation, 425 Phil. 961, 972 (2002).

[23] RULES OF COURT, Rule 41, Section 2.

[24] RULES OF COURT, Rule 45, Section 1.

[25] Section 2, Rule 50, RULES OF COURT.

[26] Tamondong v. Court of Appeals, G.R. No. 158397, November 26, 2004, 444 SCRA 509, 517.

[27] Cucueco v. Court of Appeals, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 298.

[28] See Philippine National Bank v. Romillo, Jr., No. L-70681, October 16, 1985, 139 SCRA 320.

[29] China Road and Bridge Corporation v. Court of Appeals, 401 Phil. 590, 599 (2000).

[30] De Dios v. Bristol Laboratories (Phils.), Inc., 154 Phil. 311, 318 (1974).

[31] Rava Development Corporation v. Court of Appeals, G.R. No. 96825, July 3, 1992, 211 SCRA 144; Del Bros Hotel Corporation v. Court of Appeals, G.R. No. 87678, June 16, 1992, 210 SCRA 33, 38.

[32] Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc., G.R. No. 87434, August 5, 1992, 212 SCRA 194, 207.

[33] See Parañaque Kings Enterprises, Incorporated v. Court of Appeals, 335 Phil. 1184 (1997).

[34] Supra note 29.

[35] Id. at 600.

[36] Id. at 601-602.

[37] 363 Phil. 393 (1999).

[38] G.R. No. 109053, October 7, 1994, 237 SCRA 484.

[39] Id. at 491-492.

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