SPOUSES LAZARO M. ZULUETA AND PERLA SUCAYAN-ZULUETA PETITIONERS, VS. JOSE WONG, DOMINGO WONG, VICENTE WONG, NENITO BALLESTEROS, BEN OLIVER DIAZ AND BOY DIAZ, RESPONDENTS.

G.R. NO. 153514. June 08, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 58722, which reversed the ruling of the Regional Trial Court (RTC) of Iloilo City, Branch 23, in Civil Case No. 22733, as well as the resolution denying the motion for reconsideration thereof.

The Antecedents

Ana Ballesteros was the registered owner of a parcel of land known as Lot No. 87, consisting of 1,525 square meters, located at the Municipality of Oton, Iloilo City, and covered by Transfer Certificate of Title (TCT) No. T-76146. Upon her death on June 6, 1973, she was survived by her husband, Jose Wong, and their children, namely, Domingo and Vicente, all surnamed Wong; and Anita married to Nenito Ballesteros.

In May 25, 1978, the said heirs of Ana executed an "Extrajudicial Partition and Deed of Sale,"[2] where a 925-square-meter portion of the subject property was sold to Lazaro M. Zulueta, then mayor of Oton, for P5,000.00. Pursuant to the deed, Lazaro caused Lot No. 87 to be subdivided into two lots under Psd-06-001214: Lot No. 87-A, with an area of 600 square meters, and Lot No. 87-B, the portion subject of the deed. The Register of Deeds issued TCT No. T-96289 over the property in the name of Lazaro.

In the meantime, Anita died intestate on November 19, 1984, and was survived by her husband Nenito Ballesteros and their children Ben Oliver, Analen, and Boy, all surnamed Diaz.

On March 20, 1995, Jose Wong, Domingo and Vicente Wong, Nenito Ballesteros and Ben, Analen and Boy, all surnamed Diaz, filed a Complaint for Declaration of Nullity of Sale with Damages[3] before the RTC of Iloilo City against the spouses Lazaro M. Zulueta and Perla Sucayan. The case was raffled to Branch 26 thereof, and docketed as Civil Case No. 22276.

The plaintiffs therein alleged that Lazaro "caused the execution of the Extrajudicial Partition and Deed of Sale," which was not supported by any consideration as no amount was paid by them; hence, the said sale was fictitious and simulated. They further alleged that Lazaro was then the incumbent mayor of Oton, Iloilo, and continued to be so until 1986; considering the power he wielded then, they did not have the courage to complain with respect to the alleged sale of the 925-square-meter portion of Lot No. 87. Moreover, notwithstanding the execution of the said deed, they continued to be in the possession of the property.[4] The plaintiffs prayed that judgment be rendered as follows:

> ... 1) declaring the sale in favor of the defendants of 925 square meters of Lot 87 (now known as Lot 87-B) as shown in Annex "A" hereof as null and void, [the] same having been executed without consideration, fictitious and simulated; 2) ordering defendants to execute a Deed of Reconveyance of Lot 87-B in favor of the plaintiffs; 3) ordering the cancellation of Transfer Certificate of Title No. T-96290 over Lot No. 87-B in the names of the defendants; and 4) ordering defendants to pay plaintiffs the sum of P100,000.00 for exemplary damages, P250,000.00 for moral damages and P100,000.00 for attorney's fees and to pay the costs.
>
> Plaintiffs pray for such other and further reliefs as may be just and equitable in the premises.[5]

The defendants Zulueta moved to dismiss the complaint, alleging that it failed to state a cause of action. The plaintiffs failed to file any opposition to the motion. In an Order dated October 6, 1995, the trial court dismissed the complaint on the ground that the complaint failed to state a cause of action for the nullification of the sale. The trial court declared that, with the plaintiff's admission in their complaint that there was a consideration for said sale, the failure of the defendants, as buyers of the property, to pay the purchase price thereof did not make the deed fictitious, simulated or void, but merely gave the plaintiffs some cause of action other than for the declaration of the nullity of said deed. The plaintiffs filed a motion for reconsideration of the order which the defendants opposed. The trial court denied the motion in its Order dated November 23, 1995. The plaintiffs then filed a notice of appeal, which the defendants opposed via a motion to dismiss. The notice of appeal was denied due course in the trial court's Order dated December 19, 1995, on the ground that it had been filed out of time. The October 6, 1995 Order of the RTC, thus, became final and executory.

On December 20, 1995, the plaintiffs filed another Complaint in the RTC against the same defendants for declaration of nullity of sale, reconveyance and damages in the RTC of Iloilo City. This second complaint contained substantially the same allegations as the complaint in Civil Case No. 22276, and the same relief was prayed for, except that in paragraph 8 thereof, the plaintiffs deleted the phrase "because defendant never paid any amount for the alleged sale to the plaintiffs nor were there other consideration of said sale" which had been alleged in the same paragraph in their complaint in Civil Case No. 22276. The case was raffled to Branch 23 of the RTC, and docketed as Civil Case No. 22733.

In their answer with counterclaim, the defendants alleged, by way of special and affirmative defenses, that the complaint was but a reiteration of Civil Case No. 22276, which had been dismissed by the court for failure to state a cause of action, and which order of dismissal became final[6] following the plaintiffs' failure to make a timely appeal. Moreover, the present case was almost identical to Civil Case No. 22276; as such, the finding of failure to state a cause of action in Civil Case No. 22276 was, likewise, applicable, and was thus a bar to the same case on the ground of res judicata. Finally, the complaint, likewise, failed to state a cause of action for the declaration of the nullity of the deed of sale and reconveyance of the property subject matter thereof.

According to the defendants, the sale of the property in their favor could not have been fictitious and simulated, considering that the certificate of title over the subject lot was issued in their names; neither could it be considered as lacking in consideration because the contract itself provided for a consideration, the receipt of which the plaintiffs duly acknowledged. It was further alleged that the plaintiffs were fully aware that it was at their instance and request that defendant Lazaro Zulueta arranged for the physical division of the entire Lot No. 87, at his own expense, and that they were fully and completely paid the consideration of the sale of the 925-square-meter portion thereof. The defendants further claimed that a bank loan (with the subject property as collateral) in the sum of P300,000.00 was about to be released to them, but because of the filing of the earlier Civil Case No. 22276 and the annotation of the notice of lis pendens on the title to the property, the said loan was not immediately released and they failed to finance their business.

The defendants prayed that the trial court render judgment as follows:

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> - Dismissing the complaint;
>
> - Confirming the ownership and possession of defendants of the land in question, Lot 87-B, of the Cadastral Survey of Oton, Iloilo;
>
> - Directing the plaintiffs, jointly and severally, to pay the defendants the sums of P150,000.00 as actual damages by way of unrealized profits, P500,000.00 each as moral damages; at least P250,000.00 as attorney's fees; P50,000.00 as miscellaneous litigation and actual expenses; such amount of exemplary damages as may be determined by this Honorable Court as just and equitable in the circumstances; and to pay the costs.
>
> Other reliefs just and proper are also prayed for.[7]

The defendants filed a Motion for Preliminary Hearing on Affirmative Defenses[8] which was set for hearing on February 7, 1997.[9] On the said date, however, upon the instance of the parties, the trial court issued an Order[10] giving 20 days from the said date to submit their respective position papers.

The plaintiffs opposed the motion, contending that the October 6, 1995 Order of the RTC in Civil Case No. 22276 was not an adjudication of the merits of the said case. The plaintiffs alleged that they revised paragraph 8 of the first complaint in view of the ruling by the RTC therein that their complaint failed to state a cause of action for the declaration of the nullity of the deed of sale. Hence, the plaintiffs averred, paragraph 8 of their second complaint categorically alleged that there was no cause or consideration for the alleged sale, thus:

> - That the sale of 925 square meters of Lot 87 in favor of the defendants was fictitious and simulated, and the alleged sale was without cause or consideration[11]

In contrast, paragraph 8 of their first complaint docketed as Civil Case No. 22276 reads:

> - That the sale of 925 square meters of Lot 87 in favor of the defendants was not supported by any consideration because defendants never paid any amount for the alleged sale to the plaintiffs nor were there other considerations for said sale; hence, said sale was fictitious and simulated.[12]

The plaintiffs asserted that a sale without a cause or consideration is void and produces no effect whatsoever; a contract of sale is void where the price which appears therein to have been paid was, in fact, never paid by the buyer to the seller.

On April 2, 1997, the trial court issued an Order[13] dismissing the complaint on the following grounds: (a) res judicata; (b) forum shopping; and (c) lack of cause of action.

Aggrieved by the ruling of the trial court, the plaintiffs appealed to the CA on the following arguments:

> - THE HONORABLE LOWER COURT ERRED IN DISMISSING THE CASE ON THE GROUND THAT IS NOT RAISED AS AN AFFIRMATIVE DEFENSE IN THE ANSWER.[14]
>
> - THE HONORABLE LOWER COURT ERRED IN DISMISSING THE COMPLAINT ON THE GROUND THAT THERE WAS A CONSIDERATION FOR THE DEED OF SALE WHEN NO HEARING WAS CONDUCTED.[15]
>
> - THE HONORABLE LOWER COURT ERRED IN NOT DENYING THE MOTION TO DISMISS ON THE GROUND OF RES JUDICATA.[16]

The CA reversed the assailed Order of the trial court, and directed it to proceed with the trial of the case on the merits on the following ratiocination:

> The complaint alleges that the plaintiffs-appellants are the owners of a parcel of land which they inherited from their predecessor-in-interest. In a document denominated as "Extrajudicial Partition and Deed of Sale," it

> appears that plaintiffs-appellants sold in favor of defendants-appellees a portion of the land in question. They allege, however, that the said document was merely imposed upon them to be executed by defendant-appellee Lazaro M. Zulueta who was then the incumbent mayor of Oton, Iloilo. They further claim that the same document was without cause or consideration, fictitious and absolutely simulated; hence, null and void.
>
> Theoretically presuming the foregoing allegations as true, one need not go beyond them to make out a case of declaration of nullity of the "Extrajudicial Partition and Deed of Sale." It is clear from the aforestated allegations that plaintiffs-appellants possess a cause of action against defendants-appellees.
>
> Thus, it was error for the court a quo to have dismissed the complaint on the ground that "the Extrajudicial Partition and Deed of Sale is supported by a consideration; hence, the proper action should be Specific Performance or Rescission of Contract," the matter of absence of consideration being evidentiary which should only be threshed out in the trial proper. To deny plaintiffs-appellants their right to a full blown trial constitutes a denial of due process, it appearing that there are issues that cannot be decided without a trial of the case on the merits [Robert Development Corporation v. Quitain, 315 SCRA 150 (1999)]. [17]

The appellees therein, now the petitioners, came to this Court and assail the ruling of the CA. According to the petitioners, the issue of whether the sale of the subject property was supported by a consideration had already been resolved in Civil Case No. 22276, a case between the same parties involving the same subject matter. This can be gleaned from the ruling of the trial court therein. The petitioners aver that the respondents themselves admitted in paragraphs 8, 15 and 16 of their complaint in Civil Case No. 22276 that the said transaction covering the deed had a consideration, which was, however, unpaid. The petitioners stress that under the doctrine of conclusiveness of judgment, this finding of the trial court in Civil Case No. 22276 – that the deed is supported by a consideration – in addition to the respondent's admission of its existence, is an order on the merits of the case binding on them in Civil Case No. 22733. Thus, contrary to the ruling of the appellate court, the absence or presence of consideration for the extrajudicial partition and deed of sale is no longer an issue; the existence of consideration was already admitted by the respondents and upheld by the lower court in a now final order in Civil Case No. 22276. Consequently, the CA should have sustained the trial court's dismissal of Civil Case No. 22733 on the ground of res judicata.

The petitioners further aver that the complaint itself does not specify the constitutive facts upon which the said deed may be declared as absolutely fictitious or absolutely simulated as to consider it a void one. By their respective conduct, both parties to the deed complied with its terms and conditions, and the respondents cannot now, twenty (20) years thereafter, be heard to complain and disavow their intent to comply therewith.

The petitioners also point out that the Extrajudicial Partition and Deed of Sale executed by the petitioners and the respondents was a public document; to contradict the facts contained in a notarial document and the presumption of regularity in its favor, there must be evidence that is clear, convincing and more than merely preponderant. The petitioners cite the ruling of the Court in Mendiola v. Court of Appeals[18] to bolster their claim.

For their part, the respondents allege that, in arguing their cause, the petitioners thereby admitted that the instant complaint raised the factual or evidentiary issue of the consideration of the sale, and in effect, sustained the decision of the CA. They posit that the issue of the presence or absence of consideration is evidentiary, and should be threshed out in a full- blown trial. The respondents invoke the ruling of this Court in Alberto v. Court of Appeals,[19] where it was held that "a complaint should not be dismissed for insufficiency of cause of action unless it appears from the face of the complaint that the plaintiff is not entitled to any relief under any state of facts which could be proved within the facts alleged therein." Additionally, the respondents cite Parañaque Kings Enterprises, Inc. v. Court of Appeals[20] to bolster their claim that the petition at bench should be dismissed.

The petition is meritorious.

We agree with the petitioners' contention that the respondents' action was barred by the October 6, 1995 Order of the RTC dismissing the first complaint. As correctly pointed out by the petitioners in the CA and in their petition at bench, the said Order of the RTC was an adjudication of the case on its merits.[21]

An order is one on the merits of the case if based on legal rights, as distinguished from mere matters of practice, procedure, jurisdiction or form.[22] It has been held that an order is upon the merits when it amounts to a declaration of the law to the respective rights and duties of the parties, based upon the ultimate facts or state of facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical or dilatory objections or contentions.[23] A dismissal of a complaint on the ground that it does not state a cause of action does not make the dismissal any less an adjudication on the merits.[24]

The order of dismissal of the complaint on the ground that it does not state a cause of action, whether right or wrong, is a bar to another action where the second complaint is virtually a copy of the complaint in the first action.[25]

In this case, the RTC dismissed the respondents' first complaint in Civil Case No. 22276, on the ground that it failed to state a cause of action for declaration of the nullity of the deed of sale, and ruled that the respondents herein, as the plaintiffs in the RTC, had other remedies. The trial court declared that, as gleaned from the averments of the complaint, there was a consideration for the sale but that the petitioners-vendees, who failed to pay the same to the respondents as the vendors therein; hence, the respondents had no cause of action for the declaration of the nullity of the deed of sale. The respondents admitted in the RTC that their second complaint is virtually a copy of their first complaint, except for the deletion of the phrase "which the defendants failed to pay." This was done obviously to emphasize the allegation in their first complaint that there was in fact no consideration for the sale. To reiterate, the dismissal by the RTC of the first complaint was on the merits of the case and barred their second action.

There is merit in the respondents' contention that, as held by the Court in Montecillo v. Reynes,[26] failure to pay the consideration is different from lack of consideration. The former results in a right to demand the fulfillment or cancellation of the obligation under an existing contract, while the latter prevents the existence of a valid contract. Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void ab initio for lack of consideration. The respondents are also correct in asserting that their first complaint stated causes of action showing the nullity of the sale, and for reconveyance and damages, and that the RTC erred in dismissing the case. As plaintiffs therein, the respondents alleged that there was no price or consideration for the sale and in fact had not received any consideration for the said sale, thereby implying that the price of P5,000.00 stated in the deed was simulated or fictitious. However, the respondents allowed the trial court's order of dismissal to become final and executory upon their failure to appeal the order within the period therefor. As a general proposition, the operation of a judgment or order on the merits of the case as res judicata is not affected by a mere right of appeal where the appeal has not been taken or by an appeal which has never been perfected.[27]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 58722 are REVERSED AND SET ASIDE. The assailed Order of the Regional Trial Court of Iloilo City, Branch 23 in Civil Case No. 22733 is AFFIRMED. No costs.

SO ORDERED.

Austria-Martinez, Acting chairman, Tinga, and Chico-Nazario, JJ., concur.
Puno.(Chairman), J., on official leave.

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Eubolo G. Verzola and Eliezer R. De Los Santos concurring.

[2] Records, p. 8.

[3] Records, pp. 56-62.

[4] Id. at 58-59.

[5] Id. at 61.

[6] Records, p. 78.

[7] Records, p. 21.

[8] Id. at 37-38.

[9] Order dated 29 January 1997; Records, p. 36.

[10] Records, p. 43.

[11] Records, p. 3.

[12] Id. at 58.

[13] Id. at 89-91.

[14] CA Rollo, pp. 25-26.

[15] Id. at 31.

[16] CA Rollo, p. 33.

[17] Rollo, pp. 77-78.

[18] G.R. No. 122807, 5 July 1996, 258 SCRA 492.

[19] G.R. No. 119088, 30 June 2000, 334 SCRA 756.

[20] G.R. No. 111538, 26 February 1997, 268 SCRA 727.

[21] Angel v. Bullingtons, 330 U.S. 183, 91 L.ed. 832 (1947), Federated Department Store, Inc. v. Mortie, 452 U.S. 394 (1981); Bell v. Hood, 327 U.S. 678, 90 L.ed. 939 (1946).

[22] Swift v. McPherson, 232 U.S. 51, 58 L.ed. 499; Fairmont Aluminum Co. v. C.I.R., 222 F.2d, 622 (1955).

[23] Allied Banking Corporation v. Court of Appeals, G.R. No. 108089, 10 January 1994, 229 SCRA 252.

[24] Id. at 259.

[25] Linton v. Perry Knitting Co., 64 N.E. 2d 270 (1945).

[26] G.R. No. 138018, 26 July 2002, 385 SCRA 244.

[27] Wright v. Montana-Dakota Utilities, Co., 299 F2d, 470 (1962).

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