SPOUSES CARLOS AND JUANITA SURIA, PETITIONERS, VS. HEIRS OF BRIGIDO M. TOMOLIN, NAMELY: DAMIANA T. PEREZ AND LUCRESIA T. DECLARO, RESPONDENTS.

G.R. NO. 157483. June 21, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari[1] assailing the Decision[2] of the Court of Appeals dated February 28, 2003 in CA-G.R. SP No. 72559.

The facts are:

Brigido M. Tomolin was the owner of Lot No. 6098 consisting of 22,820 square meters located at Barangay IV, San Francisco, Agusan del Sur. It was registered in his name under Transfer Certificate of Title (TCT) No. T-1981 of the Registry of Deeds of Agusan del Norte.

On July 13, 1998, Tomolin sold the lot to Carlos Suria, petitioner, for P228,200.00, as shown by a Deed of Absolute Sale of a Parcel of Land. Consequently, TCT No. T-1981 was cancelled and in lieu thereof, TCT No. T-12112 was issued in petitioner's name.

After the sale, Carlos Suria and his wife Juanita, also a petitioner, had the lot subdivided into several parcels. Thus, TCT No. T-12112 in the name of petitioner Carlos Suria was cancelled and in lieu thereof, TCT Nos. T-12949, 12950, 12951, and 12952 were all issued in the names of petitioners.

On September 22, 2000, Tomolin filed with the Regional Trial Court, Branch 6, Agusan del Sur a Complaint for Annulment of the Deed of Absolute Sale of a Parcel of Land and Cancellation of TCT No. T-12112 with Prayer for a Writ of Preliminary Injunction against petitioners. The complaint alleges, among others, that Tomolin, then seriously ill, was inveigled by petitioners into signing the contract of sale and that they did not pay him the amount of P228,200.00.

On October 17, 2000, Tomolin filed with the trial court an amended complaint, adding the following allegation:

> - That thereafter defendant Carlos T. Suria, in evident bad faith, has caused the subdivision of Lot No. 6098, Pls-67, and also succeeded in securing derivative Transfer Certificate of Title No. T-12949 for Lot No. 6098-B (1,429 sq. meters); TCT No. T-12950 for Lot No. 6098-F (150 sq. m.); and TCT No. 12952 for Lot No. 6098-G (147 sq. m.) all in his name, attached hereto as Annex "E-1" to "E-4", respectively.

On the next day, or on October 18, 2000, Tomolin died. He was survived by his nieces, namely: Damiana Tomolin Perez, Caridad Tomolin Soria, Lucresia Tomolin Declaro, and Lolita Tomolin Espina.

On October 28, 2001, counsel for Tomolin filed with the trial court a Notice of Substitution of a Party pursuant to Section 16, Rule 3 of the 1997 Rules of Civil Procedure, as amended.[3]

On March 7, 2001, the trial court issued an Order allowing the substitution of the late Tomolin by his heirs, herein respondents. On August 15, 2001, petitioners filed their Opposition to the Notice of Substitution of a Party.

On November 8, 2001, the trial court issued an Order denying petitioners' Opposition for lack of merit.

On December 7, 2001, petitioners filed a motion for reconsideration, but the same was denied by the trial court in its Order dated January 29, 2002. A second motion for reconsideration filed by petitioners was likewise denied.

Thereupon, petitioners filed with the Court of Appeals a Petition for Certiorari, docketed as CA-G.R. SP No. 72559.

In its Decision dated February 28, 2003, the Court of Appeals dismissed the petition.

Hence, the instant petition.

Petitioners contend that the action to annul the Deed of Absolute Sale and to cancel TCT No. T-12112 filed by Tomolin did not survive after his death. Hence, his heirs cannot continue to prosecute the action.

For their part, respondents maintain that the petition should be denied for lack of merit.

The petition must fail.

In Gonzales v. Philippine Amusement and Gaming Corporation,[4] we reiterated our long-settled ruling in Bonilla v. Barcena[5] on how to determine whether an action survives or not, thus:

> The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental. (Emphasis supplied)

In his complaint and amended complaint filed with the trial court, Tomolin prayed for the (1) annulment of the Deed of Absolute Sale of a Parcel of Land dated July 13, 1998; (2) reconveyance of Lot No. 6098; (3) reconveyance of TCT No. T-1981; and (4) cancellation of TCT Nos. T-12112, T-12949, T-12950, T-12951, and T-12952 in the names of petitioners.

There can be no dispute that Tomolin's complaint affects primarily and principally property and property rights. Clearly, the action survives his death. Thus, the Court of Appeals did not err in affirming the trial court's judgment allowing the substitution of the late Tomolin.

WHEREFORE, we DENY the petition and AFFIRM the assailed Decision of the Court of Appeals in CA-G.R. SP No. 72559.

Costs against petitioners.
SO ORDERED.
Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Filed under Rule 45, 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Eloy R. Bello, Jr. (retired) and concurred in by Associate Justice Cancio C. Garcia (now a member of this Court) and Associate Justice Sergio L. Pestaño (deceased).

[3] Section 16. Death of party; duty of counsel. – Whenever a party to a pending action dies, and the claim is not

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thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[4] G.R. No. 144891, May 27, 2004, 429 SCRA 533, 540.

[5] No. L-41715, June 18, 1976, 71 SCRA 491.

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