

**SPS. THELMA AND GREGORIO ABRAJANO, SPS. VIRGINIA AND
RODEL LAVA AND OSCAR DACILLO, PETITIONERS, VS. HEIRS OF
AUGUSTO F. SALAS, JR., NAMELY: TERESITA D. SALAS, FABRICE
CYBILL D. ...**

G.R. NO. 158895. February 16, 2006

Ponente: TINGA, J.

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TINGA, J.:

Before us is a Petition for Review on Certiorari[1] dated August 2, 2003, assailing the Decision[2] of the Court of Appeals in CA-G.R. SP No. 75882 dated April 30, 2003, which ruled that the trial court judge should have inhibited himself from hearing the case and directed that it be raffled off to another branch, and its Resolution[3] dated July 15, 2003 which denied petitioners' motion for reconsideration.

The facts as condensed from the records are as follows:

Augusto L. Salas, Jr. (Salas) was the registered owner of a large parcel of land located in Lipa City, Batangas. On May 15, 1987, Salas and Laperal Realty Development Corporation (Laperal) entered into an Owner-Contractor Agreement whereby the latter undertook the horizontal development of Salas's Lipa properties. Salas also subsequently executed a Special Power of Attorney authorizing Laperal to exercise general control, supervision and management of the sale, for cash or installment, of the lands or portions thereof covered by the Owner-Contractor Agreement.

On August 6, 1996, Teresita Salas filed with the Regional Trial Court (RTC) of Makati City a verified petition for the declaration of presumptive death of her husband, Augusto, who had then been missing for more than seven (7) years. The petition, docketed as Sp. Proc. No. M-4394, was granted on December 12, 1996.

Meanwhile, Laperal subdivided the properties and sold portions thereof to Rockway Real Estate Corporation (Rockway), South Ridge Village, Inc. (South Ridge), spouses Gregorio and Thelma Abrajano (Abrajanos), spouses Rodel and Virginia Lava (Lavas), Oscar Dacillo (Dacillo), Eduardo A. Vacuna (Vacuna), Marahani Development Corporation (Marahani), Florante dela Cruz (dela Cruz) and Jesus Vicente B. Capellan (Capellan).

On February 3, 1998, the Heirs of Salas filed a Complaint[4] for declaration of nullity of sale, conveyance, cancellation of contract, accounting and damages against the above-named buyers of the properties. The Complaint was docketed as Civil Case No. 98-0047 and raffled to the sala of Judge Avelino G. Demetria (Judge Demetria). The Heirs of Salas alleged that they suffered lesion on account of the simulated sales of Salas' properties by Laperal for which they demanded accounting from the latter and damages from the buyers.

Laperal filed a Motion to Dismiss[5] on the ground of failure to comply with the arbitration clause in the Owner-Contractor Agreement.

Vacuna and Capellan filed an Answer with Compulsory Counterclaim and Cross-Claim,[6] alleging that the

Complaint states no cause of action; that plaintiffs have no capacity to sue; that the condition precedent of resorting to arbitration was not complied with; that they were buyers in good faith and for value; and that plaintiffs' claim over the subject properties is a virtual opening of Salas's succession prior to the required 10-year period of disappearance under Art. 390 of the Civil Code.[7]

Marahani and dela Cruz filed an Answer with Compulsory Counterclaim and Cross-Claim,[8]raising as affirmative defenses the prescription of the cause of action for rescission; the lack of capacity to sue of one of the plaintiffs; that they were buyers in good faith; that the sale to them of a portion of Salas's property was for a consideration; and that the arbitration clause in the Owner-Contractor Agreement should have first been complied with.

The Abrajanos, the Lavas, and Dacillo filed a Joint Answer with Counterclaim and Cross-Claim,[9] raising essentially the same affirmative defenses as the rest of the defendants.

For their part, Southridge and Rockway filed separate Answers,[10]claiming that plaintiffs' Complaint is tantamount to opening Salas's succession before the mandatory 10-year period of absence under the Civil Code. Southridge further averred that it is a purchaser in good faith and that the arbitration clause should have first been resorted to.

The Heirs of Salas opposed Laperal's Motion to Dismiss, arguing that the arbitration clause is inapplicable since there are defendants who are not privy to the Owner-Contractor Agreement. Besides, the agreement purportedly allows any of the parties to seek its cancellation.

In an Order[11] dated August 19, 1998, Judge Demetria granted the motion to dismiss, prompting the Heirs of Salas to question the order of dismissal before the Supreme Court in G.R. No. 135362. On December 13, 1999, the Supreme Court set aside the order of dismissal and directed the trial court to proceed with the hearing of the case.[12]

When the case was remanded to the trial court, Vacuna and Capellan filed a Motion for Leave to Conduct Preliminary Hearing on the Defendants' Affirmative Defenses,[13] praying that the affirmative defenses in their answer be heard in a preliminary hearing pursuant to Sec. 6, Rule 16 of the 1997 Rules of Civil Procedure (Rules of Court).

The Heirs of Salas filed a Comment,[14]contending that the affirmative defense of lack of capacity to sue has no basis in view of the issuance of letters of administration in favor of Teresita D. Salas by the RTC of Makati in Sp. Proc. No. M-4394.

Judge Demetria granted the motion to conduct preliminary hearing in his Order[15] dated August 17, 2001. Accordingly, hearings on the affirmative defenses were conducted at which the Heirs of Salas participated. On March 31, 2002, the Abrajanos, the Lavas, and Dacillo filed a Formal Offer of Evidence[16] to which the Heirs of Salas filed their Comments/Objections.[17]

Subsequently, they also filed a motion to inhibit Judge Demetria from further hearing the case pursuant to Sec. 1, Par. 2, Rule 137 of the Rules of Court, averring that the previous dismissal of the complaint by the judge, as well as the preliminary hearing ordered by him on motion of the defendants, "have rendered the plaintiffs uneasy and doubtful as to whether they will ever obtain an impartial judgment."[18] Defendants opposed the Motion for Inhibition.

On September 13, 2002, Judge Demetria issued an Order[19] denying the Motion for Inhibition on the ground that his previous dismissal of the case on the issue of arbitration was just an interpretation of the law, rules and

jurisprudence without any intent to give undue advantage to the other parties.

Their Motion for Reconsideration[20] having been denied,[21]the Heirs of Salas filed a petition for certiorari before the Court of Appeals, assailing Judge's Demetria's Order on the ground that his denial of the Motion for Inhibition is a violation of their right to due process as it deprived them of the "cold neutrality of an impartial judge." Judge Demetria allegedly allowed the delay in the resolution of the main case by dismissing the same without considering all of the issues raised by the buyers only to allow the latter to relitigate the same issues in a preliminary hearing.

Interpreting Sec. 6, Rule 16 of the Rules of Court, the appellate court held that the provision applies only if no motion to dismiss had been filed. If a motion to dismiss had been filed and denied, the defendant may also reiterate the grounds thereof as affirmative defenses but no preliminary hearing may be had thereon because a motion to dismiss had already been filed and decided. According to the Court of Appeals, the reversal by the Supreme Court of the trial court's order of dismissal operated as a denial of the motion to dismiss. Hence, a preliminary hearing on the affirmative defenses should no longer have been conducted.

Accordingly, even as the Court of Appeals found no indication of bias and partiality on the part of Judge Demetria, it ordered his inhibition because the Heirs of Salas had already allegedly lost faith in his actions.

With the denial of their Motion for Reconsideration, petitioners are now before this Court asserting that the Court of Appeals erroneously applied Sec. 6, Rule 16 of the Rules of Court. They contend that respondents participated fully in the preliminary hearings on the affirmative defenses and that it was only after the admission of the evidence presented by petitioners that they filed a motion to inhibit Judge Demetria.

In their Comment[22]dated October 27, 2003, respondents counter that the validity of the hearing on the affirmative defenses was not raised as an issue in CA-G.R. SP. No. 75882. Rather, what was at issue was whether Judge Demetria should inhibit himself from hearing the case considering that respondents had already lost faith that they will obtain impartial judgment. Moreover, they stress that the case had been rendered moot and academic because Judge Demetria issued an Order[23] on May 8, 2003, inhibiting himself from the case.

Petitioners filed a Reply[24]dated January 28, 2004, arguing that the propriety of the preliminary hearings conducted is necessarily connected to the issue of whether Judge Demetria should have inhibited himself. They further contend that the case has not been rendered moot and academic by Judge Demetria's inhibition because should the latter's Order granting the motion to conduct preliminary hearings be upheld, then the new presiding judge could make a ruling based on the evidence already presented.

First, the issue of mootness.

As a general rule, courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved.[25] Courts generally decline jurisdiction when the issues are already moot.

It does not escape our attention, however, that the preliminary hearings on petitioners' affirmative defenses are nearing conclusion with the filing of petitioners' Formal Offer of Evidence and respondents' Comments/Objections. To put to naught the proceedings already taken only to repeat them during trial serves no practical purpose. Clearly, the Court's declaration on the issues raised would still be of practical use and value.

Besides, this case presents an important procedural issue which is capable of repetition if left unresolved. Hence, we shall not refrain from expressing an opinion and rendering a decision on the merits.

At the heart of the present controversy is the question of the propriety of Judge Demetria's Order granting petitioners' motion to conduct preliminary hearings on their affirmative defenses.

Sec. 6, Rule 16 of the Rules of Court provides:

Sec. Pleading grounds as affirmative defenses.—If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

This section is explicit in stating that the defendant may reiterate any of the grounds for dismissal provided under Rule 16 of the Rules of Court as affirmative defenses but that a preliminary hearing may no longer be had thereon if a motion to dismiss had already been filed. The section, however, does not contemplate a situation, such as the one obtaining in this case, where there are several defendants but only one filed a motion to dismiss.

In such a case, should the denial of the motion to dismiss prejudice the other defendants such that they may no longer move for a preliminary hearing on their own affirmative defenses?

The answer is no. Translated in terms of this case, the Motion to Dismiss filed by Laperal does not affect the right of the other defendants, including petitioners herein, to plead their own affirmative defenses and be preliminarily heard thereon. The trial court is likewise not proscribed from granting, in its discretion, such a motion for preliminary hearing. The only caveat is that the ground of non-compliance with the condition precedent of resorting to arbitration, which was raised in Laperal's Motion to Dismiss, may no longer be included in the preliminary hearing because it has already been heard and finally resolved.

That said, we now examine whether the Court of Appeals erred in ordering Judge Demetria's inhibition. The rule on inhibition and disqualification of judges is laid down in Sec. 1, Rule 137 of the Rules of Court:

Sec. 1. Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Thus stated, the rule contemplates two kinds of inhibition: compulsory disqualification assumes that a judge cannot actively or impartially sit on a case for the reasons stated in the first paragraph, while voluntary inhibition under the second paragraph leaves to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons with only his conscience to guide him.[26]

The issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.[27] This discretion is an acknowledgement of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the parties-litigants in their courtrooms.[28] The decision on whether he should inhibit himself, however, must be based on his rational and logical assessment of the circumstances prevailing in the case brought before him.[29]

The rule does not give the judge the unfettered discretion to decide whether he should desist from hearing a case. The inhibition must be for just and valid causes.[30] The mere imputation of bias, partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor.[31] The

disqualification of a judge cannot be based on mere speculations and surmises or be predicated on the adverse nature of the judge's rulings towards the movant for inhibition.[32]

The basis of the motion for inhibition filed by respondents in this case is Judge Demetria's Order dismissing the Complaint and subsequent grant of petitioners' motion for preliminary hearing on their affirmative defenses. This situation has allegedly made respondents uneasy and doubtful as to whether they will obtain impartial judgment.

We believe that these circumstances give Judge Demetria a just and valid reason for inhibiting himself. When the situation is such that would induce doubt as to a judge's actuations and probity, or incite such a state of mind, he should conduct a careful self-examination.[33]

In this case, Judge Demetria's Order dismissing the Complaint already caused considerable delay in the proceedings. His subsequent order granting the motion for preliminary hearing, while correct, caused further prejudice to respondents of a character that would make them doubt his probity and neutrality. Rightly so, Judge Demetria ultimately thought it more prudent to inhibit himself than to have any order, resolution or decision he would make in the case put under a cloud of distrust and skepticism.

In view of the foregoing, we deem it best that Civil Case No. 98-0047 be forthwith tried by the presiding judge of Branch 12 of the Regional Trial Court of Lipa City, Hon. Vicente F. Landicho, to whom the case was re-raffled upon Judge Demetria's inhibition.

WHEREFORE, the instant petition is hereby GRANTED IN PART. The Decision of the Court of Appeals dated April 30, 2003 and its Resolution dated July 15, 2003 are hereby REVERSED and SET ASIDE. Civil Case No. 98-0047 is hereby REMANDED to Branch 12, Regional Trial Court of Lipa City, for further proceedings in accordance with this Decision.

SO ORDERED.

Quisumbing, (Chairman), Carpio and Carpio-Morales, JJ., concur.

[1]Rollo, pp. 8-26.

[2] Id. at 28-36. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Eubolo G. Verzola and Mario L. Guariña III.

[3] Id. at 38-43.

[4]RTC Records, Vol. I, pp. 2-19; Dated February 2, 1998.

[5]Id. at 167-173; Dated April 22, 1998.

[6] Id. at 183-190; Dated April 30, 1998.

[7] Art. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

[8]RTC Records, Vol. I, pp. 174-182; Dated May 1, 1998.

[9]Id. at 191-208; Dated May 4, 1998.

[10] Id. at 279-282 (Southridge) and 287-290 (Rockway); Both dated August 6, 1998.

[11]Id. at 298-299.

[12] Id. at 318.

[13]RTC Records, Vol. II, pp. 50-56; Dated June 18, 2001.

[14] Id. at 62-65; Dated June 20, 2001.

[15] Id. at 83.

[16] Id. at 184-200; Dated March 18, 2002.

[17] Id. at 291-296; Dated May 6, 2002.

[18] Id. at 309-311; Dated May 20, 2002.

[19] Id. at 343-344.

[20]Id. at 346-350; Dated September 1, 2002.

[21] Id. at 373; Order dated 27 November 2002.

[22] Rollo, pp. 124-135.

[23] Id. at 172. The Order states:

The Honorable Court of Appeals in its DECISION dated April 30, 2003 granted the petition for certiorari filed by the herein plaintiffs under Rule 65 of the Rules of Court.

As directed by the Honorable Court of Appeals, the undersigned judge hereby inhibits himself from further proceeding with this instant case. Consequently, the Branch Clerk of this Court is ordered to transmit the complete records of this case to the Office of the Clerk of Court, RTC Lipa City, for appropriate action.

SO ORDERED.

[24] Id. at 174-182.

[25] Royal Cargo Corporation v. Civil Aeronautics Board, G.R. Nos. 103055-56, January 26, 2004, 421 SCRA 21, 24.

[26] Chin v. Court of Appeals, G.R. No. 144618, August 15, 2003, 409 SCRA 206, 212-215.

[27] Id., citing Latorre v. Ansaldo, A.M. No. RTJ-00-1563, May 31, 2001, 358 SCRA 311, 317.

[28] Id., citing Gutang v. Court of Appeals, 354 Phil. 77, 88 (1998).

[29] Id., citing Gacayan v. Pamintuan, A.M. No. RTJ-99-1483, September 17, 1999, 314 SCRA 682,700.

[30]Id., citing People v. Kho, G.R. No. 139381, April 20, 2001, 357 SCRA 290, 296.

[31] Id., citing People v. Court of Appeals, G.R. No. 129120, July 2, 1999, 309 SCRA 705, 710; People v. Kho, supra; and Go v. Court of Appeals, G.R. No. 106087, April 7, 1993, 221 SCRA 397, 409-410.

[32]Republic v. Gingoyon, G.R. No. 166429, December 19, 2005.

[33] Bautista v. Rebuena, No. L-46117, February 22, 1978, 81 SCRA 535.

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