

SPOUSES JULITA DE LA CRUZ AND FELIPE DE LA CRUZ, PETITIONERS, VS. PEDRO JOAQUIN, RESPONDENT.

G.R. No. 162788. July 28, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Rules require the legal representatives of a dead litigant to be substituted as parties to a litigation. This requirement is necessitated by due process. Thus, when the rights of the legal representatives of a decedent are actually recognized and protected, noncompliance or belated formal compliance with the Rules cannot affect the validity of the promulgated decision. After all, due process had thereby been satisfied.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the August 26, 2003 Decision[2] and the March 9, 2004 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 34702. The challenged Decision disposed as follows:

"WHEREFORE, the foregoing considered, the appeal is DISMISSED and the assailed decision accordingly AFFIRMED in toto. No costs."[4]

On the other hand, the trial court's affirmed Decision disposed as follows:

"WHEREFORE, judgment is hereby rendered:

"a)

declaring the Deed of Absolute Sale (Exh. "D") and "Kasunduan" (Exhibit B), to be a sale with right of repurchase;

"b)

ordering the plaintiff to pay the defendants the sum of P9,000.00 by way of repurchasing the land in question;

"c)

ordering the defendants to execute a deed of reconveyance of said land in favor of the plaintiff after the latter has paid them the amount of P9,000.00 to repurchase the land in question;

"d)

ordering the defendants to yield possession of the subject land to the plaintiff after the latter has paid them the amount of P9,000.00 to repurchase the property from them; and

"e)

ordering the defendants to pay the plaintiff the amount of P10,000.00 as actual and compensatory damages; the amount of P5,000[.00] as exemplary damages; the amount of P5,000.00 as expenses of litigation and the

amount of P5,000.00 by way of attorney's fees." [5]

The Facts

The case originated from a Complaint for the recovery of possession and ownership, the cancellation of title, and damages, filed by Pedro Joaquin against petitioners in the Regional Trial Court of Baloc, Sto. Domingo, Nueva Ecija. [6] Respondent alleged that he had obtained a loan from them in the amount of P9,000 on June 29, 1974, payable after five (5) years; that is, on June 29, 1979. To secure the payment of the obligation, he supposedly executed a Deed of Sale in favor of petitioners. The Deed was for a parcel of land in Pinagpanaan, Talavera, Nueva Ecija, covered by TCT No. T-111802. The parties also executed another document entitled "Kasunduan." [7]

Respondent claimed that the Kasunduan showed the Deed of Sale to be actually an equitable mortgage. [8] Spouses De la Cruz contended that this document was merely an accommodation to allow the repurchase of the property until June 29, 1979, a right that he failed to exercise. [9]

On April 23, 1990, the RTC issued a Decision in his favor. The trial court declared that the parties had entered into a sale with a right of repurchase. [10] It further held that respondent had made a valid tender of payment on two separate occasions to exercise his right of repurchase. [11] Accordingly, petitioners were required to reconvey the property upon his payment. [12]

Ruling of the Court of Appeals

Sustaining the trial court, the CA noted that petitioners had given respondent the right to repurchase the property within five (5) years from the date of the sale or until June 29, 1979. Accordingly, the parties executed the Kasunduan to express the terms and conditions of their actual agreement. [13] The appellate court also found no reason to overturn the finding that respondent had validly exercised his right to repurchase the land. [14]

In the March 9, 2004 Resolution, the CA denied reconsideration and ordered a substitution by legal representatives, in view of respondent's death on December 24, 1988. [15]

Hence, this Petition. [16]

The Issues

Petitioners assign the following errors for our consideration:

"I. Public Respondent Twelfth Division of the Honorable Court of Appeals seriously erred in dismissing the appeal and affirming in toto the Decision of the trial court in Civil Case No. SD-838;

"II. Public Respondent Twelfth Division of the Honorable Court of Appeals likewise erred in denying [petitioners'] Motion for Reconsideration given the facts and the law therein presented." [17]

Succinctly, the issues are whether the trial court lost jurisdiction over the case upon the death of Pedro Joaquin, and whether respondent was guilty of forum shopping. [18]

The Court's Ruling

The Petition has no merit.

First Issue: Jurisdiction

Petitioners assert that the RTC's Decision was invalid for lack of jurisdiction. [19] They claim that respondent died during the pendency of the case. There being no substitution by the heirs, the trial court allegedly lacked

jurisdiction over the litigation.[20]

Rule on Substitution

When a party to a pending action dies and the claim is not extinguished,[21] the Rules of Court require a substitution of the deceased. The procedure is specifically governed by Section 16 of Rule 3, which reads thus:

"Section 16. Death of a party; duty of counsel. -Whenever a party to a pending action dies, and the claim is not 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."

The rule on the substitution of parties was crafted to protect every party's right to due process.[22] The estate of the deceased party will continue to be properly represented in the suit through the duly appointed legal representative.[23] Moreover, no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied.[24]

The Court has nullified not only trial proceedings conducted without the appearance of the legal representatives of the deceased, but also the resulting judgments.[25] In those instances, the courts acquired no jurisdiction over the persons of the legal representatives or the heirs upon whom no judgment was binding.[26]

This general rule notwithstanding, a formal substitution by heirs is not necessary when they themselves voluntarily appear, participate in the case, and present evidence in defense of the deceased.[27] These actions negate any claim that the right to due process was violated.

The Court is not unaware of *Chittick v. Court of Appeals*,[28] in which the failure of the heirs to substitute for the original plaintiff upon her death led to the nullification of the trial court's Decision. The latter had sought to recover support in arrears and her share in the conjugal partnership. The children who allegedly substituted for her refused to continue the case against their father and vehemently objected to their inclusion as parties.[29] Moreover, because he died during the pendency of the case, they were bound to substitute for the defendant also. The substitution effectively merged the persons of the plaintiff and the defendant and thus extinguished the obligation being sued upon.[30]

Clearly, the present case is not similar, much less identical, to the factual milieu of *Chittick*.

Strictly speaking, the rule on the substitution by heirs is not a matter of jurisdiction, but a requirement of due process. Thus, when due process is not violated, as when the right of the representative or heir is recognized and protected, noncompliance or belated formal compliance with the Rules cannot affect the validity of a promulgated decision.[31] Mere failure to substitute for a deceased plaintiff is not a sufficient ground to nullify a trial court's decision. The alleging party must prove that there was an undeniable violation of due process.

Substitution in the Instant Case

The records of the present case contain a "Motion for Substitution of Party Plaintiff" dated February 15, 2002, filed before the CA. The prayer states as follows:

"WHEREFORE, it is respectfully prayed that the Heirs of the deceased plaintiff-appellee as represented by his daughter Lourdes dela Cruz be substituted as party-plaintiff for the said Pedro Joaquin.

"It is further prayed that henceforth the undersigned counsel[32] for the heirs of Pedro Joaquin be furnished with copies of notices, orders, resolutions and other pleadings at its address below."

Evidently, the heirs of Pedro Joaquin voluntarily appeared and participated in the case. We stress that the appellate court had ordered[33] his legal representatives to appear and substitute for him. The substitution even on appeal had been ordered correctly. In all proceedings, the legal representatives must appear to protect the interests of the deceased.[34] After the rendition of judgment, further proceedings may be held, such as a motion for reconsideration or a new trial, an appeal, or an execution.[35]

Considering the foregoing circumstances, the Motion for Substitution may be deemed to have been granted; and the heirs, to have substituted for the deceased, Pedro Joaquin. There being no violation of due process, the issue of substitution cannot be upheld as a ground to nullify the trial court's Decision.

Second Issue: Forum Shopping

Petitioners also claim that respondents were guilty of forum shopping, a fact that should have compelled the trial court to dismiss the Complaint.[36] They claim that prior to the commencement of the present suit on July 7, 1981, respondent had filed a civil case against petitioners on June 25, 1979. Docketed as Civil Case No. SD-742 for the recovery of possession and for damages, it was allegedly dismissed by the Court of First Instance of Nueva Ecija for lack of interest to prosecute.

Forum Shopping Defined

Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition.[37] Forum shopping may be resorted to by a party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by an appeal or a special civil action for certiorari.[38]

Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice, and congests court dockets.[39] Willful and deliberate violation of the rule against it is a ground for the summary dismissal of the case; it may also constitute direct contempt of court.[40]

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another.[41] We note, however, petitioners' claim that the subject matter of the present case has already been litigated and decided. Therefore, the applicable doctrine is *res judicata*. [42]

Applicability of Res Judicata

Under *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit.[43] The term literally means a "matter adjudged, judicially acted upon, or settled by judgment." [44] The principle bars a subsequent suit involving the same parties, subject matter, and cause of action. Public policy requires that controversies must be settled with finality at a given point in time.

The elements of res judicata are as follows: (1) the former judgment or order must be final; (2) it must have been rendered on the merits of the controversy; (3) the court that rendered it must have had jurisdiction over the subject matter and the parties; and (4) there must have been -- between the first and the second actions -- an identity of parties, subject matter and cause of action.[45]

Failure to Support Allegation

The onus of proving allegations rests upon the party raising them.[46] As to the matter of forum shopping and res judicata, petitioners have failed to provide this Court with relevant and clear specifications that would show the presence of an identity of parties, subject matter, and cause of action between the present and the earlier suits. They have also failed to show whether the other case was decided on the merits. Instead, they have made only bare assertions involving its existence without reference to its facts. In other words, they have alleged conclusions of law without stating any factual or legal basis. Mere mention of other civil cases without showing the identity of rights asserted and reliefs sought is not enough basis to claim that respondent is guilty of forum shopping, or that res judicata exists.[47]

WHEREFORE, the Petition is DENIED and the assailed Decision and Resolution are AFFIRMED. Costs against petitioners.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 3-14.

[2] Id., pp. 19-27. Twelfth Division. Penned by Justice Josefina Guevara-Salonga, with the concurrence of Justices Romeo A. Brawner (Division chair and now CA presiding justice) and Arturo D. Brion (member).

[3] Id., pp. 28-29.

[4] CA Decision, p. 8; rollo, p. 26.

[5] Rollo, pp. 19-20.

[6] Assailed Decision, p. 2; rollo, p. 20.

[7] Ibid.

[8] Ibid.

[9] Id., p. 3; rollo, p. 21.

[10] Id., p. 1; rollo, p. 20.

[11] Id., p. 7; rollo, p. 25.

[12] Id., p. 1; rollo, p. 20.

[13] Id., p. 7; rollo, p. 25.

[14] Ibid.

[15] Assailed Resolution, p. 2; rollo, p. 29.

[16] The case was deemed submitted for decision on December 10, 2004, upon this Court's receipt of the respective Memoranda of petitioners and respondent. Petitioners' Memorandum was signed by Atty. George

Erwin M. Garcia; respondent's Memorandum, by Attys. Nicolas P. Lapeña Jr. and Gilbert F. Ordoña.

[17] Petition, pp. 6-7; rollo, pp. 8-9. Petitioners erred in phrasing the assignment of errors, since the CA should not be impleaded as a respondent in a Petition for Review on Certiorari. §4, Rule 45, Rules of Court.

[18] Petition, p. 5; rollo, p. 7.

This Court will not address the allegations that were not raised in the Petition, but only in petitioners' Memorandum. In the Court's Resolution dated October 13, 2004, the parties were directed to submit their respective Memoranda without raising new issues. In their Memorandum, petitioners added paragraphs alleging that respondent had failed to make a valid tender of payment and abandoned their right to the repurchase agreement. These are factual issues that are not proper in a Petition for Review on Certiorari. (§1, Rule 45, Rules of Court) Moreover, it would be against the fundamental right to due process if these allegations are considered without hearing private respondent and the CA on this matter. A Petition for review essentially charges the lower court with "reversible errors." How can there be any such mistakes with respect to a matter not raised and taken up in the assailed Decision?

[19] Petition, p. 8; rollo, p. 10.

[20] Ibid.

[21] Actions that survive against the decedent's representatives are as follows: (1) actions to recover real or personal property or an interest thereon, (2) actions to enforce liens thereon, (3) actions to recover damages for an injury to a person or a property. §1, Rule 87 of the Rules of Court. See also *Board of Liquidators v. Heirs of M. Kalaw et al.*, 127 Phil. 399, 414, August 14, 1967.

[22] *Riviera Filipina Inc. v. Court of Appeals*, 430 Phil. 8, 31, April 5, 2002; *Torres Jr. v. Court of Appeals*, 344 Phil. 348, 366, September 5, 1997; *Vda. de Salazar v. Court of Appeals*, 320 Phil. 373, 377, November 23, 1995.

[23] *Heirs of Hinog v. Melicor*, GR No. 140954, April 12, 2005; *Torres Jr. v. Court of Appeals*, *ibid.*

[24] *Vda. de Salazar v. Court of Appeals*, *supra*, p. 377; *De Mesa et al. v. Mencias et al.*, 124 Phil. 1187, 1195, October 29, 1966.

[25] *Brioso v. Rili-Mariano*, 444 Phil. 625, 636, January 31, 2003; *Lawas v. Court of Appeals*, 230 Phil. 261, 268, December 12, 1986; *The Heirs of the Late F. Nuguid Vda. de Haberer v. Court of Appeals*, 192 Phil. 61, 70, May 26, 1981; *Vda. de Dela Cruz v. Court of Appeals*, 88 SCRA 695, 701, February 28, 1979; *Ferreria et al. v. Vda. de Gonzales et al.*, 104 Phil. 143, 149, July 17, 1958.

[26] *Ibid.* See also *Heirs of Hinog*, *supra*; *Vda. de Salazar v. Court of Appeals*, *supra*.

[27] *Brioso v. Rili-Mariano*, *supra*, p. 637; *Vda. de Salazar v. Court of Appeals*, *supra*, p. 377.

[28] 166 SCRA 219, October 4, 1988.

[29] *Id.*, p. 226.

[30] *Id.*, p. 227.

[31] *Brioso v. Rili-Mariano*, *ibid.*; *Torres Jr. v. Court of Appeals*, *supra*; *Vda. de Salazar v. Court of Appeals*, *id.*, p. 380.

[32] Law Firm of Lapeña & Associates, Rm. 208 Golden Crescent Mansion, 90 Alvero St., Loyola Heights, Quezon City, signed by Nicolas P. Lapeña Jr., the same counsel in the present case appearing for respondent.

[33] March 9, 2004 Resolution, p. 2; rollo, p. 29.

[34] Vda. de Dela Cruz v. Court of Appeals, *supra*, p. 702.

[35] Moran, Comments on the Rules of Court (1995), Vol. I, p. 286.

[36] Petitioners' Memorandum, p. 5; rollo, p. 75.

[37] R & E Transport Inc. v. Latag, 422 SCRA, 698, 710, February 13, 2004; Nordic Asia Limited v. Court of Appeals, 403 SCRA 390, 401, June 10, 2003; New Sampaguita Builders Constructions, Inc. v. The Estate of Canoso, 397 SCRA 456, 462, February 14, 2003.

[38] R & E Transport Inc. v. Latag, *ibid.*; Bangko Silangan Development Bank v. Court of Appeals, 412 Phil. 757, 770, June 29, 2001.

[39] Santos v. Commission on Elections, 447 Phil. 760, 771, March 26, 2003; Argel v. Court of Appeals, 374 Phil. 867, 876, October 12, 1999.

[40] §5, Rule 7, Rules of Court. See also Top Rate Construction & General Services Inc. v. Paxton Development Corporation, 410 SCRA 604, 620, September 11, 2003.

[41] Saura v. Saura Jr., 372 Phil. 337, 349, September 1, 1999; Employees' Compensation Commission v. Court of Appeals, 327 Phil. 510, 516, June 28, 1996; First Philippine International Bank v. Court of Appeals, 322 Phil. 280, 307, January 24, 1996.

[42] Litis pendentia refers to the pendency of another action between the same parties involving the same cause of action. Compania General de Tabacos de Filipinas v. Court of Appeals, 422 Phil. 405, 423, November 29, 2001.

This ground is also referred to as *lis pendens* or *auter action pendant*. Buan v. Lopez, 229 Phil. 65, 68, October 13, 1986.

To be more accurate, petitioners should have alleged, not simply the rule on forum shopping, but also *res judicata* as a ground to dismiss respondent's Complaint. See Employees' Compensation Commission v. Court of Appeals, *supra*, p. 518.

[43] Taganas v. Emuslan, 410 SCRA 237, 241, September 2, 2003; Bardillon v. Barangay Masili of Calamba, Laguna, 402 SCRA 440, 446, April 30, 2003; Oropeza Marketing Corp. v. Allied Banking Corp., 441 Phil. 551, 563, December 3, 2002.

[44] Bardillon v. Barangay Masili of Calamba, Laguna, *ibid.*; Oropeza Marketing Corp. v. Allied Banking Corp., *ibid.*; Mirpuri v. Court of Appeals, 376 Phil. 628, 649, November 19, 1999.

[45] Taganas v. Emuslan, *supra*; Bardillon v. Barangay Masili of Calamba, Laguna, *ibid.*; Mirpuri v. Court of Appeals, *id.*, p. 650; Deang v. Intermediate Appellate Court, 154 SCRA 250, 254, September 24, 1987.

[46] §1, Rule 131, Rules of Court.

[47] See also Bank of America NT&SA v. Court of Appeals, 448 Phil. 181, 198, March 31, 2003.

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