

HEIRS OF FRANCISCO RETUYA, FELICITAS R. PINTOR, HEIRS OF EPIFANIA R. SEMBLANTE, NAMELY, PREMILINO SEMBLANTE, LUCIFINA S. TAGALOG, URSULINA S. ALMACEN; HEIRS OF JUAN RETUYA, NAME...

G.R. No. 163039. April 06, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in this petition for review on certiorari are the Resolutions dated November 28, 2003[1] and March 3, 2004[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76235, which dismissed petitioners' Petition for Annulment of Judgment and their Motion for Reconsideration, respectively.

Severo Retuya (Severo) and Maxima Mayol Retuya (Maxima) were husband and wife without any children. Severo left several parcels of land registered under his name which are located in Mandaue City, to wit:

A parcel of land situated in Barangay Tipolo, City of Mandaue, known as Lot No. 113-U of the Subdivision Plan, Psd -07-016382 being a portion of Lot No. 113, II-5121 Amd. (Hacienda Mandaue) LRC Rec. 4030, containing an area of Two Hundred and Eighty-One (281) sq. meters described in the Transfer Certificate of Title No. 26728 in the Office of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land located in Barangay Tipolo, Mandaue City, known as Lot No. 5 of the consolidation of Lot No. 122-Q, 122-R, 122-S, 122-T, 122-U, 122-V, 122-W, 122-X, 122-U, 122-AA, Psd 07-05-12450, LRC Rec. No. 4030, containing an area of Five Hundred Seventy-Four (574) sq. meters, described in the Transfer Certificate of Title No. 25213 of the Office of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land located in Barangay Tipolo, Mandaue City, known as Lot No. 10 of the consolidation of Lot No. 122-Q, 122-R, 122-S, 122-T, 122-U, 122-V, 122-W, 122-X, 122-Y and 122-AA, Psd 07-05-12450, LRC Rec. No. 4030, containing an area of Four Hundred Forty-Two (442) sq. meters, described in the Transfer Certificate of Title No. 25218 of the Office of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land, Lot No. 121-1-10 of the subdivision plan, Psd 07-023191, being a portion of Lot 121-1, LRC Psd. 262374, LRC Rec. No. 4030 located in Banilad, Mandaue City, containing an area of One Thousand Five Hundred (1,500) sq. meters described under TCT 32718 of the Registry of Land Title and Deeds of Mandaue City.

A parcel of land, Lot No. 47-L of the subdivision plan Psd. 07-05-012479, being a portion of Lot 47-11-5121 Amd Hacienda Mandaue LRC Rec. No. 4030, situated in Barangay Banilad, Mandaue City, covered by TCT 21687 in the Registry of Land Titles and Deeds for the City of Mandaue.[3]

Some of these parcels of land were covered by a lease contract, the rentals of which were received by respondents Nicolas Retuya and Procopio Villanueva, while Lot No. 47-L, covered by TCT No. 21687, was previously sold by the Heirs of Severo and Maxima Retuya to third persons.

On June 14, 1961, Severo died intestate, survived by his wife Maxima and by Severo's full blood brothers and sisters, namely, Nicolas, Francisco, Quintin, Eulogio, Ruperto, Epifania, Georgia and the Heirs of Juan Retuya (Severo's brother who had died earlier), as well as Severo's half-blood siblings, namely, Romeo, Leona, Rafaela, Fidela, Severina and Martina.

Sometime in 1971, Maxima also died intestate, survived by her siblings, namely, Fructuoso, Daniel, Benjamin, Lorenzo, Concepcion and Teofila.

In 1996, Severo and Maxima's siblings and their nephews and nieces, herein petitioners, filed with the Regional Trial Court (RTC) of Mandaue City, an action[4] for judicial partition of the above-mentioned real properties registered under the names of Severo and Maxima, and the accounting of the rentals derived therefrom against Severo's two other brothers, respondents Nicolas and his son Procopio Villanueva, and Eulogio, who was represented by the latter's heirs.

Respondents Heirs of Eulogio filed their Answer[5] claiming that Severo had already sold the subject lands to their father Eulogio by virtue of a notarized Deed of Absolute Sale of Interests and Pro Indiviso Shares to Lands dated March 29, 1961; thus, petitioners have no right to ask for the partition of the subject properties, as respondents heirs are the owners of the same. On the other hand, respondents Nicolas and his son Procopio filed their Answer[6] admitting to have collected rentals on some of the subject properties and that such rentals were still intact and ready for partition; and that they were willing to partition the properties but were opposed by their co-respondents.

After trial, the RTC rendered a Decision[7] dated August 9, 2001, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is rendered declaring the heirs of Eulogio Retuya as owners of the 1/16 share of Severo Retuya to $\frac{1}{2}$ of the subject properties representing the shares of the late Severo Retuya which he inherited from his deceased father, Esteban Retuya and which he sold to Eulogio Retuya as follows:

Lot 113-U - 48.78 sq. meters

Lot 5 - 99.65 sq. meters

Lot 121-1-10-260 - 42 sq. meters.

and that the remaining areas of these properties, which have not been sold to defendants Heirs of Eulogio Retuya, as well as the rental, be partitioned among the herein parties in accordance with law.

Lot No. 10 is a road right of way and should not be partitioned.[8]

Respondents Heirs of Eulogio filed a Motion for Correction[9] of Mathematical Computation of their share in Lot 121-1-10 alleging that their correct share should be 255 sq. meters, instead of 42 sq. meters.

Petitioners, through their then counsel, Atty. Ernesto B. Mayol, filed a Comment[10] manifesting that they will submit and abide by whatever resolution the RTC may adopt or render in relation to the Motion for Correction of Mathematical Computation. The other respondents, represented by Atty. Basilio Duaban, did not file any comment despite receipt of the Order[11] to do so.

On October 23, 2001, the RTC issued an Order,[12] the dispositive portion of which reads:

WHEREFORE, the decision dated August 9, 2001 is amended by changing the area of 42 sq. meters to 255 sq. meters, and the dispositive portion of said decision will now read as follows:

WHEREFORE, premises considered, judgment is rendered declaring the Heirs of Eulogio Retuya as owners of the 1/16 share of Severo Retuya to the $\frac{1}{2}$ of the subject properties representing the shares of the late Severo

Retuya, which he inherited from his deceased father, Esteban Retuya and which he sold to Eulogio Retuya as follows:

Lot 113-U - 48.78 sq. meters

Lot 5 - 99.65 sq. meters

Lot 121-1-10-260 - 42 sq. meters.

and that the remaining areas of these properties, which have not been sold to defendants Heirs of Eulogio Retuya as well as the rental be partitioned among the herein parties in accordance with law.

Lot No. 10 is a road right of way and should not be partitioned.

Furnish parties, through counsels, copy of this Order for their information.[13]

The RTC decision became final and executory.[14]

Respondents Heirs of Eulogio filed a Motion for the Issuance of a Writ of Execution, which the RTC granted in its Order[15] dated March 15, 2002.

Petitioners, through Atty. Norberto Luna, Jr., as collaborating counsel, filed a Motion to Hold in Abeyance the Implementation of the Writ of Execution with Motion for Clarification and Precautionary Reservation to File Pertinent Pleadings and Legal Remedies.[16] Respondents Heirs of Eulogio filed their Opposition[17] thereto.

In an Order[18] dated June 14, 2002, the RTC denied the motion, and the Writ of Execution[19] was issued.

Respondents Heirs of Eulogio filed a Motion to Authorize the Branch Clerk of Court to Enforce the Amended Decision.[20] Petitioners were ordered by the RTC to file their Comment thereto. [21]

Petitioners filed their Comment with Prayer for the Issuance of a Clarificatory Order[22] as to how the RTC arrived at the new computation of 255 sq. meters from the original award of 42 sq. meters for Lot No. 121-1-10-260.

In an Order[23] dated February 17, 2003, the RTC, after finding that what was at issue was just the matter of mathematical computation of the area adjudicated to the parties, and in the interest of substantial justice, set a conference to settle once and for all the exact computation of the parties' respective shares.

On February 24, 2003, petitioners filed with the CA a Petition for Annulment of Judgment of the RTC Order dated October 23, 2001, amending the decision dated August 9, 2001, claiming that the questioned Order was a patent nullity for want of jurisdiction and utter lack of due process.

On April 30, 2003, petitioners filed with the RTC a Manifestation[24] submitting the mathematical computation and/or mode of partitioning the shares of the opposing parties.

As the RTC was in receipt of a copy of the Petition for Annulment of Judgment filed with the CA, it issued an Order[25] holding in abeyance the resolution of respondents' Motion to Authorize the Branch Clerk of Court to enforce the RTC decision pending such petition.

In a Resolution[26] dated April 24, 2003, the CA outrightly dismissed the Petition for Annulment of Judgment. It found that three of the petitioners, namely, Promilino Semblante, Salome Retuya and Fernando Retuya, did not sign the certification of non-forum shopping; and that the payment of the docket fee was short of P480.00.

Petitioners filed their Motion for Reconsideration, which the CA granted in a Resolution[27] dated July 3, 2003 and reinstated the petition.

On July 22, 2003, respondents Heirs of Eulogio filed a Motion for Reconsideration of the July 3, 2003 Resolution,[28] on the ground that it was made to appear in the Petition for Annulment of Judgment that Quintin Retuya, one of the petitioners, had signed the certification against forum shopping on March 18, 2003, when he had already died on July 29, 1996; that the signature of co-petitioner Romeo Retuya in the certification against forum shopping was not his, as compared to his signature in the letter which respondents attached to the motion for reconsideration; and that Romeo suffered a stroke in January 2003 and was bedridden until he died on April 28, 2003.

In a Resolution dated November 28, 2003, the CA granted respondents' Motion for Reconsideration and dismissed the petition, as no Comment was filed by petitioners. The CA said that Section 5, Rule 7 of the Rules of Court provides that the principal party shall sign the certification against forum shopping, as the attestation requires personal knowledge by the party who executed the same, otherwise, it would cause the dismissal of the petition. Considering that Quintin, one of the parties to the petition, died on July 29, 1996, it could have been impossible for him to sign the Petition dated March 18, 2003.

A Motion for Reconsideration[29] was filed by Atty. Renante dela Cerna as counsel for petitioners, contending that there was substantial compliance with the rule on certification against forum shopping when majority of the principal parties were able to sign the verification and certification against forum shopping. Attached in the motion for reconsideration was the affidavit of the Heirs of Quintin acknowledging said mistake and submitted a verification and certification duly signed by the heirs.

On March 3, 2004, the CA issued a Resolution denying petitioners' motion for reconsideration. In so ruling, the CA said:

While it may be true that when majority of the parties have signed the certification against non-forum shopping would constitute "substantial compliance," this Court cannot apply the same rule to petitioners. First, petitioners' counsel failed to explain why a dead person/party was able to sign the certification against non-forum shopping. The issue is not the parties' substantial compliance, but the dishonesty committed by the parties and/or their counsel when they made it appear that one of the listed parties signed the certification when in fact he died long before the petition was filed. Under Circular No. 28-91 of the Supreme Court and Section 5, Rule 7 of the Rules of Court, the attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. The liberal interpretation of the rules cannot be accorded to parties who commit dishonesty and falsehood in court.

Second, records reveal that this Motion for reconsideration was signed by a certain Atty. Renante A. Dela Cerna as counsel for the petitioners without the counsel of record, Atty. Norberto A. Luna's formal withdrawal. No notice of substitution of counsel was filed by the petitioners and Atty. Dela Cerna never entered his appearance as counsel for petitioner.

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There being no formal withdrawal or substitution of counsel made, Atty. Norberto A. Luna remains the counsel of record for petitioners. Atty. Luna may not be presumed substituted by Atty. Renante Dela Cerna merely by the latter's filing or signing of the motion for reconsideration. In the absence of compliance with the essential requirements for valid substitution of counsel of record, the court can presume that Atty. Luna continuously represents the petitioners. Hence, Atty. Renante Dela Cerna has no right to represent the petitioners in this case. [30]

Hence, this petition wherein petitioners raise the sole ground that:

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE PETITIONERS' PETITION BY RULING AGAINST THE PETITIONERS' SUBSTANTIAL COMPLIANCE TO THE

CERTIFICATION AGAINST NON-FORUM SHOPPING FOR THE ALLEGED DISHONESTY COMMITTED BY THE PARTIES AND/OR THEIR COUNSEL WHEN THEY MADE IT APPEAR THAT ONE OF THE LISTED PARTIES SIGNED THE CERTIFICATION, WHEN IN FACT HE DIED BEFORE THE PETITION WAS FILED.[31]

The CA dismissed the Petition for Annulment of Judgment after it found that Quintin, one of the parties to the petition, had already died on July 29, 1996, thus, it was impossible for him to have signed the verification and certification of non-forum shopping attached to the petition filed on March 18, 2003. The CA found petitioners to have committed dishonesty and falsehood to the court, thus, it could not apply the liberal interpretation of the rule on certification against forum shopping.

We found no reversible error committed by the CA.

As correctly observed by the CA, while we have in a number of cases[32] applied the substantial compliance rule on the filing of the certification of non-forum shopping, specially when majority of the principal parties had signed the same and who shared a common interest, We agree with the CA that such leniency finds no applicability in this case because of petitioners' dishonesty committed against the appellate court. A perusal of the verification and certification against forum shopping attached to the petition for annulment of judgment filed in the CA would show that there was a signature above the typewritten name of Quintin. In fact, written below the signature of Quintin was Community Tax Certificate (CTC) No. 06570132, issued on January 8, 2003 in Mandaue City. Thus, it would appear that Quintin, who was already dead at the time the petition was filed, had signed the verification and certification of non-forum shopping and he was even in possession of a CTC. Petitioners' actuation showed their lack of forthrightness to the CA which the latter correctly found to be a dishonest act committed against it.

Petitioners allege that the explanation of their former counsel on record, Atty. Luna, to the show cause order issued by the CA to him that: (1) he had no intention to make it appear that a dead man in the person of Quintin was able to sign the verification and certification against forum shopping; (2) when he entered his appearance as counsel for petitioners before the RTC, he, the RTC, the co-petitioners and the other respondents, as well as their counsel, knew of the fact of Quintin's death and the status of Felimon Retuya who immediately substituted his father, and in behalf of his siblings; (3) that in his entry of appearance filed before the RTC, it was Felimon, one of Quintin's heirs, who signed in the above typewritten name of Quintin, were found by the CA to be meritorious and noted the same. Thus, petitioners claim that they also have no intention of deceiving respondents, since as explained by Atty. Luna, all the parties and counsels knew of the death of Quintin.

We are not persuaded.

Notwithstanding that the CA had found the explanation of Atty. Luna to be meritorious, the CA did not err when it dismissed the petition. Notably, there was a signature above the typewritten name of Quintin without any showing that it was signed by another person for or in behalf of Quintin. In the absence of such qualification, it appeared before the CA that Quintin was the one who signed the same, especially since the CA did not know of the fact of Quintin's death. There was nothing in the petition for annulment of judgment which alleged such information. In fact, we do not find any sufficient explanation given by petitioners as to why there was a signature of Quintin appearing in the verification and certification against forum shopping.

We also find that the CA correctly denied the motion for reconsideration on the ground that Atty. Renante dela Cerna, the lawyer who filed the motion for reconsideration, had no right to represent petitioners.

Under Section 26, Rule 138 of the Rules of Court and established jurisprudence, a valid substitution of counsel has the following requirements: (1) the filing of a written application for substitution; (2) the client's written

consent; (3) the consent of the substituted lawyer if such consent can be obtained; and, in case such written consent cannot be procured, (4) a proof of service of notice of such motion on the attorney to be substituted in the manner required by the Rules.[33] In this case, petitioners failed to comply with the above requirements.

Atty. Dela Cerna, as counsel for petitioners, filed the motion for reconsideration on December 22, 2003. However, he is not the counsel on record of petitioners, but Atty. Luna. Petitioners did not file a motion for substitution of counsel on record before the filing of the motion for reconsideration. It is worthy to mention that Atty. Dela Cerna did not even file a notice of appearance. If it has been held that courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter,[34] then with more reason that Atty. Dela Cerna could not be considered to have substituted Atty. Luna as there was no notice of his entry of appearance at all.

The fact that Atty. Luna was still the counsel on record at the time Atty. Dela Cerna filed his motion for reconsideration was established in Atty. Luna's Explanation dated March 19, 2004 to the CA's Show Cause Order to him wherein he prayed therein that an Order be issued relieving him of his legal obligations to petitioners. Moreover, on April 30, 2004, petitioners through their counsel on record, Atty. Luna, filed a motion for substitution of counsels wherein they alleged that they engaged the services of Atty. Jorge Esparagosa as their new counsel and relieved Atty. Luna of all his legal obligations to them. Notably, there was no mention at all of Atty. Dela Cerna. Indeed, there was no showing of the authority of Atty. Dela Cerna to file the motion for reconsideration for petitioners. Thus, the CA correctly found that Atty. Dela Cerna has no personality to represent petitioners and file the motion for reconsideration.

WHEREFORE, the petition is DENIED. The Resolutions dated November 28, 2003 and March 3, 2004 of the Court of Appeals are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Abad, Mendoza, and Sereno,[*] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 978, dated March 30, 2011.

[1] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring: rollo, pp. 35-36.

[2] Id. at 47-50.

[3] Records, pp. 2-3.

[4] Docketed as Civil Case No. MAN-2602; raffled off to Branch 55.

[5] Records, pp. 13-16.

[6] Id. at 24-26.

[7] Per Judge Ulric R. Cañete; rollo, pp. 73-80.

[8] Id. at 79-80.

[9] Records, pp. 193-194.

[10] Id. at 197.

[11] Id. at 198-199.

[12] Id.

[13] Id.

[14] Id. at 205.

[15] Id. at 208.

[16] Id. at 210-212.

[17] Id. at 214-215.

[18] Id. at 218.

[19] Id. at 220-221.

[20] Id.

[21] Id. at 233.

[22] Id. at 235-237.

[23] Id. at 239.

[24] Id. at 270-273.

[25] Id. at 274-275.

[26] Rollo, pp. 83-84.

[27] Id. at 99-101.

[28] Rollo, pp. 103-104.

[29] Id. at 37-44.

[30] Id. at 47-48.

[31] Id. at 26.

[32] Heirs of Agapito T. Olarte v. Office of the President of the Philippines, G.R. No. 165821, June 21, 2005, 460 SCRA 561; Cavile v. Heirs of Clarita Cavile, 448 Phil. 302, 311 (2003).

[33] See Bernardo v. Court of Appeals (Special Sixth Division), G.R. No. 106153, July 14, 1997, 275 SCRA 413, 427, citing Yu v. Court of Appeals, 135 SCRA 181, 189-190 (1985), citing Aban v. Enage, 120 SCRA 778 (1983) and Phil. Apparel Workers Union v. NLRC, 125 SCRA 391 (1983).

[34] Id., citing Sumadchat v. Court of Appeals, 111 SCRA 488, 499 (1982).

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