

**CRISTINA F. REILLO, LEONOR F. PUSO, ADELIA F. ROCAMORA,
SOFRONIO S.J. FERNANDO, EFREN S.J. FERNANDO, ZOSIMO S.J.
FERNANDO, JR., AND MA. TERESA F. PIÑON, PETITIONERS, VS.
GALICAN...**

G.R. No. 166393. June 18, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in this petition for review on certiorari is the Decision[1] dated August 31, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69261 which affirmed the Order dated May 9, 2000 of the Regional Trial Court (RTC) of Morong, Rizal, Branch 78, granting the motion for judgment on the pleadings and the motion to dismiss counter petition for partition filed by respondents in Civil Case No. 99-1148-M. Also questioned is the CA Resolution[2] dated December 14, 2004 denying petitioners' motion for reconsideration.

Spouses Quiterio San Jose (Quiterio) and Antonina Espiritu Santo (Antonina) were the original registered owners of a parcel of land located in E. Rodriguez Sr. Avenue, Teresa, Rizal covered by Transfer Certificate of Title (TCT) No. 458396 of the Register of Deeds of Rizal. The said parcel of land is now registered in the name of Ma. Teresa F. Piñon (Teresa) under TCT No. M-94400.

Quiterio and Antonina had five children, namely, Virginia, Virgilio, Galicano, Victoria and Catalina. Antonina died on July 1, 1970, while Quiterio died on October 19, 1976. Virginia and Virgilio are also now deceased. Virginia was survived by her husband Zosimo Fernando, Sr. (Zosimo Sr.) and their seven children, while Virgilio was survived by his wife Julita Gonzales and children, among whom is Maribeth S.J. Cortez (Maribeth).

On October 26, 1999, Galicano, represented by his children and attorneys-in-fact, Annalisa S.J. Ruiz and Rodegelio San Jose, Victoria, Catalina, and Maribeth (respondents) filed with the RTC a Complaint[3] for annulment of title, annulment of deed of extra-judicial settlement, partition and damages against Zosimo Sr. and his children Cristina F. Reillo, Leonor F. Puso, Adelia F. Rocamora, Sofronio S.J. Fernando, Efren S.J. Fernando, Zosimo S.J. Fernando, Jr. and Ma. Teresa (petitioners) and the Register of Deeds of Morong, Rizal. The complaint alleged among other things:

6. Under date of January 23, 1998, defendants FERNANDO et al, without the knowledge and consent of all the other surviving heirs of the deceased spouses QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO, including herein plaintiffs, executed a Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights making it appear therein that they are the "legitimate descendants and sole heirs of QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO"; and adjudicating among themselves, the subject parcel of land.

6.1 In the same document, defendants ZOSIMO SR., CRISTINA, LEONOR, ADELIA, SOFRONIO, EFREN and ZOSIMO JR., waived all their rights, participation and interests over the subject parcel of land in favor of their co-defendant MA. TERESA F. PIÑON (a.k.a MA. TERESA S.J. FERNANDO).

x x x x

7. On the strength of the said falsified Deed of Extrajudicial Settlement of Estate, defendant MA. TERESA PIÑON (a.k.a MA. TERESA S.J. FERNANDO) succeeded in causing the cancellation of TCT No. 458396 in the name of SPS. QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO and the issuance of a new Transfer Certificate of Title in her name only, to the extreme prejudice of all the other heirs of the deceased SPS. QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO, specifically, the herein plaintiffs who were deprived of their lawful participation over the subject parcel of land.

7.1 Thus, on July 6, 1999, Transfer Certificate of Title No. M-94400 was issued in the name of defendant MA. TERESA S.J. FERNANDO.

x x x x

8. As a result, the herein plaintiffs and the other surviving heirs of the deceased spouses QUITERIO SAN JOSE and ANTONINA ESPIRITU SANTO, who are legally entitled to inherit from the latter's respective estates, in accordance with the laws of intestate succession, have been duly deprived of their respective rights, interests and participation over the subject parcel of land.

8.1 Thus, there is sufficient ground to annul the subject Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights dated January 23, 1998, and all other documents issued on the strength thereof, particularly Transfer Certificate of Title No. M-94400.[4]

It was also alleged that respondents filed a complaint before the Lupong Tagapamayapa of their Barangay which issued the required certification to file action for failure of the parties to settle the matter amicably.

Petitioners filed their Answer with Counter-Petition and with Compulsory Counterclaim[5] denying that the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights which was the basis of the issuance of TCT No. M-94400, was falsified and that the settlement was made and implemented in accordance with law. They admitted that the deceased spouses Quiterio and Antonina had five children; that the subject property was not the only property of spouses Quiterio and Antonina and submitted in their counter-petition for partition the list of the other 12 parcels of land of the deceased spouses Quiterio and Antonina that petitioners alleged are in respondents' possession and control.

On January 18, 2000, respondents filed a Motion for Judgment on the Pleadings[6] alleging that: (1) the denials made by petitioners in their answer were in the form of negative pregnant; (2) petitioners failed to state the basis that the questioned document was not falsified; (3) they failed to specifically deny the allegations in the complaint that petitioners committed misrepresentations by stating that they are the sole heirs and legitimate descendants of Quiterio and Antonina; and (4) by making reference to their allegations in their counter-petition for partition to support their denials, petitioners impliedly admitted that they are not the sole heirs of Quiterio and Antonina.

Respondents filed a Reply to Answer with Compulsory Counterclaim[7] with a motion to dismiss the counter-petition for partition on the ground that petitioners failed to pay the required docket fees for their counter-petition for partition. Petitioners filed their Rejoinder[8] without tackling the issue of non-payment of docket fees.

On February 4, 2000, petitioners filed their Comment[9] to respondents' motion for judgment on the pleading and prayed that the instant action be decided on the basis of the pleadings with the exception of respondents' unverified Reply. Petitioners also filed an Opposition to the motion to dismiss the counter-petition for partition.

On May 9, 2000, the RTC rendered its Order,[10] the dispositive portion of which reads:

- The Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights, dated January 23, 1998 and

Transfer Certificate of Title No. M-94400 in the name of Ma. Teresa S.J. Fernando are declared null and void;

- The Register of Deeds of Rizal, Morong Branch, is directed to cancel TCT No. 94400; and

- The Heirs of Quiterio San Jose and Antonina Espiritu Santo is (sic) directed to partition the subject parcel of land covered by TCT No. M-458396 in accordance with the law of intestate succession.[11]

SO ORDERED.

The RTC found that, based on the allegations contained in the pleadings filed by the parties, petitioners misrepresented themselves when they alleged in the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights that they are the sole heirs of the deceased spouses Quiterio and Antonina; that petitioners prayed for a counter-petition for partition involving several parcels of land left by the deceased spouses Quiterio and Antonina which bolstered respondents' claim that petitioners falsified the Extrajudicial Settlement which became the basis for the issuance of TCT No. M-94400 in Ma. Teresa's name; thus, a ground to annul the Deed of Extrajudicial Settlement and the title. The RTC did not consider as filed petitioners' Counter-Petition for Partition since they did not pay the corresponding docket fees.

Petitioners filed their Motion for Reconsideration, which the RTC denied in an Order[12] dated August 29, 2000.

Dissatisfied, petitioners filed an appeal with the CA. After the parties filed their respective briefs, the case was submitted for decision.

On August 31, 2004, the CA rendered its assailed Decision affirming the May 9, 2000 Order of the RTC.

The CA found that, while the subject matter of respondents' complaint was the nullity of the Deed of Extrajudicial Settlement of Estate among Heirs with Waiver of Rights that resulted in the issuance of TCT No. M-94400 in Ma. Teresa's name, petitioners included in their Answer a Counter-Petition for Partition involving 12 other parcels of land of spouses Quiterio and Antonina which was in the nature of a permissive counterclaim; that petitioners, being the plaintiffs in the counter-petition for partition, must pay the docket fees otherwise the court will not acquire jurisdiction over the case. The CA ruled that petitioners cannot pass the blame to the RTC for their omission to pay the docket fees.

The CA affirmed the RTC's judgment on the pleadings since petitioners admitted that the deceased spouses Quiterio and Antonina had five children which included herein plaintiffs; thus, petitioners misrepresented themselves when they stated in the Deed of Extrajudicial Settlement that they are the legitimate descendants and sole heirs of the deceased spouses Quiterio and Antonina; that the deed is null and void on such ground since respondents were deprived of their rightful share in the subject property and petitioners cannot transfer the property in favor of Ma. Teresa without respondents' consent; that TCT No. M-94400 must be cancelled for lack of basis. The CA affirmed the RTC's Order of partition of the subject property in accordance with the rules on intestate succession in the absence of a will.

Petitioners filed the instant petition for review on certiorari raising the following assignment of errors, to wit:

THE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE APPEAL OF THE DEFENDANTS (HEREIN PETITIONERS) AND IN EVENTUALLY UPHOLDING THE DECISION OF THE COURT OF ORIGIN, CONSIDERING THAT SUCH RULING WILL RESULT TO MULTIPLICITY OF SUITS BETWEEN THE SAME PARTIES AND IN VIOLATION OF THE CONSTITUTIONAL GUARANTY OF DUE PROCESS OF LAW & PROPERTY AND PROPERTY RIGHTS.

THE COURT OF APPEALS ERRED IN NOT VACATING THE ORDER OF THE TRIAL COURT IN PARTITIONING THE ESTATE WITHOUT PUBLICATION AS REQUIRED BY RULE 74 AND 76 OF

THE 1997 RULES OF CIVIL PROCEDURE. [13]

Petitioners contend that in their Comment to respondents' motion for judgment on the pleadings, they stated that they will not oppose the same provided that their Answer with Counter-Petition for Partition and Rejoinder will be taken into consideration in deciding the case; however, the RTC decided the case on the basis alone of respondents' complaint; that the Answer stated that the deed was not a falsified document and was made and implemented in accordance with law, thus, it was sufficient enough to tender an issue and was very far from admitting the material allegations of respondents' complaint.

Petitioners also fault the RTC for disregarding their claim for partition of the other parcels of land owned by the deceased spouses Quiterio and Antonina for their failure to pay the court docket fees when the RTC could have simply directed petitioners to pay the same; and that this error if not corrected will result to multiplicity of suits.

Petitioners argue that the RTC erred in ordering the partition of the subject property as it violates the basic law on intestate succession that the heirs should be named and qualified through a formal petition for intestate succession whereby blood relationship should be established first by the claiming heirs before they shall be entitled to receive from the estate of the deceased; that the order of partition was rendered without jurisdiction for lack of publication as required under Rules 74 and 76 of the Rules of Civil Procedure for testate or intestate succession.

We find no merit in the petition.

The CA committed no reversible error in affirming the judgment on the pleadings rendered by the RTC.

Section 1, Rule 34 of the Rules of Court, states:

SECTION 1. Judgment on the pleadings. -Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x.

Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue.[14] The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all.[15]

In this case, respondents' principal action was for the annulment of the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights executed by petitioners and annulment of title on the ground that petitioners stated in the said Deed that they are the legitimate descendants and sole heirs of the spouses Quiterio and Antonina. Although petitioners denied in their Answer that the Deed was falsified, they, however, admitted respondents' allegation that spouses Quiterio and Antonina had 5 children, thus, supporting respondents' claim that petitioners are not the sole heirs of the deceased spouses. Petitioners' denial/admission in his Answer to the complaint should be considered in its entirety and not truncated parts. Considering that petitioners already admitted that respondents Galicano, Victoria, Catalina and Maribeth are the children and grandchild, respectively, of the spouses Quiterio and Antonina, who were the original registered owners of the subject property, and thus excluding respondents from the deed of settlement of the subject property, there is no more genuine issue between the parties generated by the pleadings, thus, the RTC committed no reversible error in rendering the judgment on the pleadings.

A deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious.[16] The deed of settlement made by petitioners was invalid because it excluded respondents who were entitled to equal shares in the subject property. Under the rule, no

extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.[17] Thus, the RTC correctly annulled the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights dated January 23, 1998 and TCT No. M-94400 in the name of Ma. Teresa S.J. Fernando issued pursuant to such deed.

Petitioners' claim that had there been a trial, they could have presented testamentary and documentary evidence that the subject land is the inheritance of their deceased mother from her deceased parents, deserves scant consideration. A perusal of petitioners' Answer, as well as their Rejoinder, never raised such a defense. In fact, nowhere in the Deed of Extrajudicial Settlement Among Heirs with Waiver of Rights executed by petitioners was there a statement that the subject property was inherited by petitioners' mother Virginia from her deceased parents Quiterio and Antonina. Notably, petitioners never opposed respondents' motion for judgment on the pleadings.

We also find no merit in petitioners' contention that the Counter-Petition for Partition in their Answer was in the nature of a compulsory counterclaim which does not require the payment of docket fees.

A counterclaim is any claim which a defending party may have against an opposing party.[18] It may either be permissive or compulsory. It is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim.[19] A permissive counterclaim is essentially an independent claim that may be filed separately in another case.

A counterclaim is compulsory when its object arises out of or is necessarily connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.[20] Unlike permissive counterclaims, compulsory counterclaims should be set up in the same action; otherwise, they would be barred forever.

Respondents' action was for the annulment of the Deed of Extrajudicial Settlement, title and partition of the property subject of the Deed. On the other hand, in the Counter-Petition filed by petitioners in their Answer to respondents' complaint, they were asking for the partition and accounting of the other 12 parcels of land of the deceased spouses Quiterio and Antonina, which are entirely different from the subject matter of the respondents' action. Petitioners' claim does not arise out of or is necessarily connected with the action for the Annulment of the Deed of Extrajudicial Settlement of the property covered by TCT No. 458396. Thus, payment of docket fees is necessary before the RTC could acquire jurisdiction over petitioners' petition for partition.

Petitioners, however, argue that the RTC could have simply issued a directive ordering them to pay the docket fees, for its non-payment should not result in the automatic dismissal of the case.

We find apropos the disquisition of the CA on this matter, thus:

The rule regarding the payment of docket fees upon the filing of the initiatory pleading is not without exception. It has been held that if the filing of the initiatory pleading is not accompanied by payment of docket fees, the court may allow payment of the fee within reasonable time but in no case beyond the applicable prescriptive or reglementary period.

It is apparent from the arguments of the defendants-appellants that they are blaming the trial court for their omission to pay the docket fees. It is, however, our opinion that the defendants-appellants cannot pass on to the trial court the performance of a positive duty imposed upon them by the law. It should be noted that their omission to file the docket fees was raised as one of the grounds to dismiss the counter petition for partition. The defendants-appellants opposed the said motion without, however, offering an answer to the said ground raised by the plaintiffs-appellees. In fact, during the period the motion was being heard by the trial court, the defendants-appellants never paid the docket fees for their petition so that it could have at least brought to the attention of the trial court their payment of the docket fees although belatedly done. They did not even ask the

trial court for time within which to pay the docket fees for their petition. When the trial court ruled to dismiss the petition of the defendants-appellants, the latter did not, in their motion for reconsideration, ask the trial court to reconsider the dismissal of their petition by paying the required docket fees, neither did they ask for time within which to pay their docket fees. In other words, the trial court could have issued an order allowing the defendants-appellants a period to pay the docket fees for their petition if the defendants-appellants made such manifestation. What is apparent from the factual circumstances of the case is that the defendants-appellants have been neglectful in complying with this positive duty imposed upon them by law as plaintiffs of the counter petition for partition. Because of their omission to comply with their duty, no grave error was committed by the trial court in dismissing the defendants-appellants' counter petition for partition. [21]

Petitioners argue that with the dismissal of their Counter-Petition for Partition, the partition of the other parcels of land owned by the deceased spouses Quiterio and Antonina will result to multiplicity of suits.

We are not persuaded.

Significantly, in petitioners' Answer with Counter-Petition for Partition, they enumerated 12 other parcels of land owned by the deceased spouses Quiterio and Antonina. They alleged that some of these properties had already been disposed of by respondents and some are still generating income under the control and administration of respondents, and these properties should be collated back by respondents to be partitioned by all the heirs of the deceased spouses. It bears stressing that the action filed by respondents in the RTC was an ordinary civil action for annulment of title, annulment of the deed of extrajudicial settlement and partition of a parcel of land now covered by TCT No. M-94400; hence, the authority of the court is limited to the property described in the pleading. The RTC cannot order the collation and partition of the other properties which were not included in the partition that was the subject matter of the respondents' action for annulment. Thus, a separate proceeding is indeed proper for the partition of the estate of the deceased spouses Quiterio and Antonina.

Finally, petitioners contend that the RTC erred when it ordered the heirs of Quiterio and Antonina to partition the subject parcel of land covered by TCT No. 458396 in accordance with the laws of intestate succession; that the RTC violated the requirement of publication under Sections 1 and 2 of Rule 74 and Section 3 of Rule 76 of the Rules of Court.

We do not agree.

We find the ruling of the CA on the matter of the RTC's order of partition of land subject of the annulled deed of extrajudicial settlement worth quoting, thus:

Considering that the subject document and the corresponding title were canceled, the logical consequence is that the property in dispute, which was the subject of the extrajudicial settlement, reverted back to the estate of its original owners, the deceased spouses Quiterio and Antonina San Jose. Since, it was admitted that all the parties to the instant suit are legal heirs of the deceased spouses, they owned the subject property in common. It is a basic rule that any act which is intended to put an end to indivision among co-heirs or co-owners is deemed to be a partition. Therefore, there was no reversible error committed by the trial court in ordering the partition of the subject property. We find nothing wrong with such ruling considering that the trial court ordered the partition of the subject property in accordance with the rules on intestate succession. The trial court found the property to be originally owned by the deceased spouses Quiterio and Antonina San Jose and, in the absence of a will left by the deceased spouses, it must be partitioned in accordance with the rules on intestate succession.[22]

As the RTC nullified the Deed of Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights executed by petitioners and the title issued in accordance therewith, the order of partition of the land subject of the

settlement in accordance with the laws on intestate succession is proper as respondents' action filed in the RTC and respondents' prayer in their complaint asked for the partition of the subject property in accordance with intestate succession. The applicable law is Section 1, Rule 69 of the Rules of Court, which deals with action for partition, to wit:

SECTION 1. Complaint in action for partition of real estate. -- A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

And, under this law, there is no requirement for publication.

WHEREFORE, the instant petition is DENIED. The Decision dated August 31, 2004 and the Resolution dated December 14, 2004, of the Court of Appeals in CA-G.R. CV No. 69261, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Ruben T. Reyes (Retired Justice of this Court) and Jose C. Reyes, Jr., concurring; rollo, pp. 8-17

[2] Id. at 20-22.

[3] Records, pp. 2-10.

[4] Id. at 4-6.

[5] Id. at 21-27.

[6] Id. at 40-44.

[7] Id. at 56-59.

[8] Id. at 73-74

[9] Id. at 81-82.

[10] Penned by Judge Adelina Calderon-Bargas; id. at 94-97.

[11] Records, p. 97.

[12] Id. at 110-111.

[13] Rollo, p. 29.

[14] Tan v. De la Vega, G.R. No. 168809, March 10, 2006, 484 SCRA 538, 545, citing Wood Technology Corporation v. Equitable Banking Corporation, 451 SCRA 724, 731 (2005).

[15] Id.

[16] Pedrosa v. Court of Appeals, G.R. No. 118680, March 5, 2001, 353 SCRA 620, citing Villaruz v. Neme, 1 SCRA 27, 30 (1963).

[17] Rules of Court, Rule 74, Sec. 1.

[18] Rules of Court, Rule 6, Sec. 6.

[19] Lafarge Cement Philippines, Inc. v. Continental Cement Corporation, G.R. No. 155173, November 23, 2004, 443 SCRA 522, 533-534, citing *Lopez v. Gloria*, 40 Phil. 26 (1919), per Torres, J.

[20] Rules of Court, Rule 6, Sec. 7.

[21] Rollo, pp. 14-15..

[22] *Id.* at 17.

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