

EUGENIO BASBAS, TEOFILO ARAS, RUFINO ARAS, GERVACIO BASBAS, ISMAEL ARAS, EUGENIO ARAS, SIMFRONIO ARAS, FELICIANO ARAS, ROSITA ARAS, EUGENIO BASBAS, JR. AND SPOUSES PABLITO BASAR...

G.R. No. 172660. August 24, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Petitioners seek to prevent the revival of a judgment rendered in favor of the respondents more than two decades back.

This Petition for Review on Certiorari assails the February 17, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72385 which denied the appeal filed before it and affirmed in toto the May 21, 2001 Order[2] of the Regional Trial Court of Ormoc City, Branch 35. Also assailed is the April 19, 2006 Resolution[3] denying the Motion for Reconsideration thereto.

Factual Antecedents

On September 2, 1976, respondent Beata Sayson (Beata) and her husband Roberto Sayson, Sr. (Roberto Sr.) filed a Petition for Registration of an agricultural land located in Cagbatang, Balagtas, Matag-ob, Leyte docketed as Land Registration Case No. 0-177. The said application was opposed by the Republic of the Philippines and herein petitioners Eugenio Basbas (Eugenio Sr.), Teofilo Aras (Teofilo) and Rufino Aras (Rufino). On March 22, 1979, the Court of First Instance (CFI) of Leyte, Branch V (Ormoc City) rendered a Decision adjudicating to the spouses Sayson said agricultural land and approving its registration under their names.[4]

The oppositors filed their appeal to the CA docketed as CA-G.R. No. 66541. In a Decision[5] dated July 24, 1985, the appellate court affirmed in toto the Decision of the CFI. This CA Decision became final and executory on August 21, 1985[6] and, accordingly, a Writ of Possession was issued on November 21, 1985, which was never implemented.

The following year or on September 17, 1986, Original Certificate of Title (OCT) No. 2496[7] was issued to the spouses Sayson pursuant to the March 22, 1979 CFI Decision. An Alias Writ of Possession was issued on April 6, 1989 but this could also not be implemented in view of the refusal of Eugenio Sr. and his son Eugenio Basbas, Jr. (Eugenio Jr.). Claiming that the land they occupied is not the same land subject of the CFI Decision,[8] they demanded that a relocation survey be conducted. Hence, a relocation survey was conducted by order of the Regional Trial Court (RTC), Branch 12, Ormoc City.[9]

In an Order[10] dated September 13, 1989, the RTC approved the Commissioner's Report[11] on the relocation survey and ordered the original oppositors, petitioners Eugenio Sr., Teofilo and Rufino, as well as their co-petitioners herein Gervacio Basbas (Gervacio), Ismael Aras (Ismael), Eugenio Aras (Eugenio), Simfronio Aras (Simfronio), Feliciano Aras (Feliciano), Rosita Aras (Rosita) and Eugenio Jr. to vacate the subject property, viz:

[R]espondents are directed to vacate the portion of Lot No. 1, Psu-08-000235 covered by OCT No. 2496 and subject of the final decree of registration which, [up to the] present, said respondents are still possessing pursuant to the final and executory judgment of the Court of Appeals and as particularly defined in the Commissioner's report submitted on August 3, 1989 x x x.

Respondents are reminded that under Rule 71 of the New Rules of Court, failure on their part to so obey this order may make them liable for contempt of this Court.

SO ORDERED.[12]

Gervacio, Ismael, Eugenio, Simfronio, Feliciano, Rosita and Eugenio Jr., although not oppositors in CA-G.R. No. 66541, were likewise ordered to vacate the property in view of the following pronouncement in the RTC's September 13, 1989 Order:

It appearing from the records that respondents Eugenio Basbas, Teofilo Aras, Gervacio Basbas, Rufino Aras, Ismael Aras, Eugenio Aras, Simfronio Aras, Feliciano Aras, Rosita Aras and Eugenio Basbas[,] Jr. are parties to the present case, they having been the principal oppositors to the petition filed by the applicants as shown in the records, pages 34, 35 and 36, Vol. 1 x x x[13] (Emphasis supplied.)

This September 13, 1989 Order was, however, not implemented within the five-year period from the time it became final.[14] Hence, respondent Beata and her son Roberto Sayson, Jr. (Roberto Jr.), as successor-in-interest of the late Roberto Sr., filed on August 18, 1995 a Complaint for Revival of Judgment[15] before the RTC of Ormoc City, Branch 12,[16] docketed as Civil Case No. 3312-0. Impleaded as defendants were Eugenio Sr., Teofilo, Rufino, Gervacio, Ismael, Eugenio, Simfronio, Feliciano, Rosita, and Eugenio Jr. Petitioner-spouses Pablito Basarte and Marcelina Basbas-Sabarte[17] (spouses Basarte), who, although not identified in the September 13, 1989 Order as principal oppositors in the land registration case, were likewise impleaded as defendants since they also allegedly harvested, processed, and sold the coconuts found in the subject property.

Upon receipt of summons, Gervacio, Rufino, Ismael, Eugenio, Feliciano, Rosita and Eugenio Jr. filed a Motion to Dismiss[18] on the ground that the Complaint states no cause of action. This was, however, denied[19] so the same set of petitioners, except for Feliciano, filed an Answer with Counterclaim.[20]

In their Answer with counterclaim, said petitioners admitted the allegations in paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of respondents' Complaint which state that:

x x x x

4. On March 22, 1979, the Honorable Judge Numeriano Estenzo rendered a decision in the above-mentioned Land Registration [c]ase in favor of the petitioners x x x and against the oppositors, the dispositive portion of said decision reads:

`WHEREFORE, decision is hereby rendered x x x [and] the land described under Plan PSU-08-000235 dated September 10, 1973 of Geodetic Engineer Nestorio Encenzo already APPROVED by the Acting Regional Director on June 27, 1974 is hereby adjudicated and registered in the names of the Spouses ROBERTO SAYSON and BEATA O. SAYSON, of legal ages, Filipinos, spouses and residents of Campokpok, Tabango, Leyte, Philippines and as soon as this decision becomes final, let a decree of registration be issued by the Land Registration Commission.

SO ORDERED.' (x x x)

5. From the above decision the oppositors (defendants herein) appealed;

6. On July 24, 1985, the Honorable Court of Appeals rendered its decision, the dispositive portion [of which]

reads:

'WHEREFORE, PREMISES CONSIDERED, finding no merit in this appeal the decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.'

and the said decision has become final and executory on August 21, 1985 per Entry of Judgment issued by the Court of Appeals x x x.

7. That consequently, on September 17, 1986 an Original Certificate of Title No. N-2496 was issued in the names of Roberto Sayson and Beata O. Sayson, pursuant to Decree No. N-191615, by the Register of Deeds for the Province of Leyte;

8. That on motion, the Honorable Court, on November 21, 1985, issued a Writ of Possession which for some reason or [another] was not satisfied, so that the Honorable Court, on April 7, 1989 - acting on an ex-parte motion dated April 6, 1989 - directed the issuance of an Alias Writ of Possession;

9. That the Deputy Sheriff of this Court, Mr. Placid[o] Cayco tendered the Alias Writ of Possession to the oppositors, particularly to Mr. Eugenio Basbas, Sr. and Eugenio Basbas, Jr. who, as the Deputy Sheriff stated in his Progress Report dated May 18, 1989 'did not believe and obey the CFI Decision and the decision of the Court of Appeals' and 'x x x [t]hey demanded a relocation survey to determine the exact location of applicants' (complainant[s] herein) property described in the alias writ of possession.' x x x;

10. That on June 16, 1989, the Honorable Court, acting on the Progress Report of Deputy Sheriff Placido Cayco, issued an Order on even date appointing Geodetic Engineer Jose A. Tabil as Court Commissioner specifically 'to relocate Lot No. 1, Plan Psu-08-000235, LRC No. 0-177, Land Reg. Record No. N51830 x x x' This Order was dictated in open court in the presence of Mr. Eugenio Basbas, Sr. and Eugenio Basbas, Jr. who had both objected to the Writ of Possession, and their counsel Atty. Evargisto Escalon, and Attorney Demetrio D. Sarit, counsel for the applicants. x x x

11. That pursuant to the [O]rder dated June 16, 1989 x x x the Court assigned Commissioner, Engr. Jose A. Tabil, submitted his report stating that 'the job assigned to the commissioner was already fully and peacefully accomplished; that his 'findings [show] that all points are existing and intact on the field except x x x corner 3 of said lot x x x which at present [is] already defined and indicated on the ground.' The commissioner also attached a Sketch Plan of the land to his report. x x x

12. That, finally, the Honorable Court, on September 13, 1989 issued an Order approving the Commissioner's Report and further stated:

[R]espondents (defendants herein) are directed to vacate the portion of Lot No. 1, Psu-08-000235 covered by OCT No. 2496 and subject of final decree of registration which, until [the] present, said respondents are still possessing, pursuant to the final and executory judgment of the Court of Appeals and as particularly [defined] in the Commissioner's Report submitted on August 3, 1989 x x x

Respondents are reminded that under Rule 71 of the New Rules of Court, failure on their part to so obey this Order may make them liable for contempt of this Court.[21]

However, petitioners admitted but denied in part:

1) paragraphs 2 and 3, insofar as they alleged that they were all oppositors to the land registration case when only Eugenio Sr., Teofilo and Rufino were the oppositors therein; and

2) paragraph 14, with respect to the allegation on the retirement of the Deputy Sheriff and the heart condition of the Clerk of Court, for lack of sufficient knowledge and information sufficient to form a belief thereon.

On the other hand, they specifically denied:

1) paragraph 13, on the ground that they have the right of ownership and/or possession over the subject property; and

2) paragraph 15, on the ground that the property they are cultivating is owned by them, hence, respondents cannot suffer losses and damages.

Paragraphs 2, 3, 13, 14 and 15 alluded to in the foregoing are as follows:

2. All the defendants named above are x x x of legal age and are residents of Balagtas, Matag-ob, Leyte where they may be served summons and other court processes; while defendant-spouses Pablito Basarte and Marcelina Basbas Basarte were not named as among the oppositors in the land registration case whose decision is herein sought to be revived, said spouses are nonetheless participating in the harvest, processing and sale of the coconuts with the other defendants named above;

3. Plaintiffs Beata Sayson and her late husband, Roberto Sayson are petitioners in Land Registration Case No. 0-177 for the registration of a parcel of agricultural land situated in Barrio Balagtas, Matag-ob, Leyte, filed on September 2, 1976 with the then Court of First Instance of Leyte, Branch V, Ormoc City. The above-named defendants, namely: Eugenio Basbas, Teofilo Aras, Gervacio Basbas, Rufino Aras, Ismael Aras, Eugenio Aras, Simfronio Aras, Feliciano Aras, Rosita Aras and Eugenio Basbas, Jr. were oppositors to the application;[22]

x x x x

13. That despite this admonition in the [September 13, 1989] [O]rder that they could be cited for contempt of Court, the respondents, defendants herein, had continuously defied the same and this notwithstanding the fact that it was upon their own demands and insistence that a relocation survey be made on the premises subject of this case before they would obey the alias writ of possession x x x and that the finding[s] of the Court[-]appointed Commissioner Engr. Jose A. Tahil show that the oppositors-respondents did [encroach] on the land of plaintiffs herein;

14. That this [September 13, 1989] Order however was not implemented thru a Writ of Execution within the five-year period from the time the Order became final because of the retirement of Deputy Sheriff Placido Cayco and by reason also of the fact that the then Clerk of Court, Atty. Constantino A. Trias, Jr. who was also the ex-officio Provincial Sheriff was not physically fit to hike thru the mountains and hills of Brgy. Balagtas where the property and the defendants therein reside due to his heart condition;

15. That despite their knowledge of the Court[’s] [September 13, 1989] Order, the same [having been] dictated in open court, the respondents had continued to occupy the land of the plaintiffs and for more than five (5) years since this Order for them to vacate the land in question was issued, they had harvested the coconuts growing thereon and such other produce of the land herein involved. And until the decision of the Court of Appeals is executed, plaintiff will continue to suffer losses and damages by reason of defendants’ unlawful occupation and possession and their continued harvesting of the produce of this land of the herein plaintiffs.[23]

By way of special and affirmative defenses, said petitioners contended that the Order sought to be revived is not the "judgment" contemplated under Section 6, Rule 39 of the Rules of Court, hence the action for revival of judgment is improper. Also, except for Rufino, petitioners averred that they cannot be made parties to the complaint for revival of judgment as they were not parties to the land registration case. They thus believed that the September 13, 1989 Order sought to be revived is not binding upon them and hence, the complaint states no cause

of action with respect to them. As to the counterclaim, petitioners prayed that respondents pay them moral and exemplary damages, attorney's fees and litigation expenses.

Pre-trial conference was thereafter set[24] but since not all petitioners were served with summons, this was reset and alias summons was issued and served upon Simfronio and the spouses Basarte.[25] Upon receipt of summons, Simfronio adopted the Answer with Counterclaim of Gervacio, Rufino, Ismael, Eugenio, Feliciano, Rosita and Eugenio Jr.[26] while the spouses Basarte filed a Motion to Dismiss[27] on the ground of lack of cause of action. As said motion was also denied,[28] the spouses Basarte later filed a Manifestation[29] that they were also adopting the Answer with Counterclaim filed by Gervacio and the others.

During the pre-trial conference on July 14, 1999, the RTC issued an Order[30] which provides in part, viz:

In today's pre-trial conference, manifestations and counter-manifestations were exchanged. All the parties and their counsels are present. x x x [P]laintiffs' counsel presented a Special Power of Attorney by Beata Sayson but the Court observed that same was not duly acknowledged before the Philippine Consulate or Embassy in Canada. However, this matter is not so important[.] [W]hen the Court tried to dig and discuss with the parties on their real positions, it turned out that the plaintiffs are seeking revival of the previous final judgment, the original parties of which were Eugenio Basbas, Teofilo Aras and Rufino Aras. Eugenio and Teofilo are all dead, leaving Rufino Aras alive. It is quite complicated considering that in this action, the plaintiffs relied on the Order of this Court penned by the previous judge dated September 13, 1989 which was made after or consequent to the final judgment aforementioned, wherein the names of the other defendants were mentioned in the body thereof. After considering the merits of the various contentions, the Court is of the view that the complaint had to limit itself to the names of the original parties appearing in the original judgment now being sought for revival. The interest of the plaintiffs in seeking implementation or execution of the judgment sought to be revived which would involve the other defendants can be taken when the judgment shall have been revived.

In this connection therefore and as part of the matters to be made part in the pre-trial conference, in the exercise of the authority granted to it by law, this Court directs the plaintiffs to make the necessary amendment and/or to submit a manifestation first to this Court on the point above raised regarding amendment of the designation of the parties having in mind the objection of the defendants who manifested that should there be an amendment, this counter-claim shall be disregarded since they were brought in unnecessarily in this kind of action.

Plaintiffs therefore are given a period of ten (10) days from today within which to submit the requisite manifestation furnishing copy thereof to the defendant who upon receipt shall also be given a period of ten (10) days within which this Court will make the necessary resolution before allowing any amendment.

Hold the pre-trial conference in abeyance.

SO ORDERED. [31] (Emphasis supplied.)

In their Manifestation with Prayer,[32] respondents informed the RTC about the death of Eugenio Sr. and Teofilo who were oppositors in the land registration case and the substitution by their heirs, namely, Gervacio, Marcelina Basbas Basarte,[33] and Eugenio Jr. for Eugenio Sr. and Ismael, Vicente, Ligaya Aras (Ligaya), Rosendo Aras (Rosendo) and Daina Aras (Daina) for Teofilo. Respondents prayed that their manifestation be considered for the purpose of determining the proper parties to the case. Despite petitioners' Counter-Manifestation,[34] the RTC issued the following Order[35] on May 15, 1999:

The Manifestation of plaintiffs and the Counter-Manifestation of defendants having already been submitted and duly noted, the Court hereby directs that henceforth in the denomination of this case, the names of the original parties, Eugenio Basbas and Teofilo Aras (in Land Registration Case No. 0-177) shall still remain to

be so stated as defendants for purposes of the present case but with additional names of their respective heirs to be included and stated immediately after each name as heirs in substitution, namely: for Eugenio Basbas - 1) Gervacio Basbas, 2) Marcelina Basbas Basarte, and 3) Eugenio Basbas, Jr.; and for Teofilo Aras - 1) Ismael Aras, 2) Vicente Aras, 3) Ligaya Aras, 4) Rosendo Aras, and 5) Daina Aras.

Since from the records, only Gervacio Basbas, Eugenio Basbas, Jr. and Ismael Aras were duly served with summons, the Branch Clerk of Court is hereby directed to serve summons on the other heirs, namely: Marcelina Basbas Basarte, Vicente Aras, Ligaya Aras, Rosendo Aras, and Daina Aras.

x x x x[36]

After summons were served, Vicente, Rosendo, Ligaya and Daina were, however, declared in default for not filing any responsive pleading.[37] On February 2, 2001, the RTC issued a Pre-Trial Order[38] where the controverted stipulations and issues to be tried, among others, were enumerated as follows:

Controverted Stipulations:

- That defendants are not enjoying the produce of the land because there are period[s] wherein the fruits were subject of theft and the same is now pending at the Municipal Trial Court of Matag-ob;
- That [even] before the start of the original case, the original defendants referring to the late Eugenio Basbas, Sr. and Teofilo Aras, [and] Rufino Aras were occupying the property and they were succeeded by the respective heirs of the deceased Eugenio Basbas, Sr. and Teofilo Aras [sic];
- That plaintiff Teofilo Aras, Sr. has a daughter named Fedeliza Aras;

Issues

- Whether x x x the plaintiffs are entitled to revival of judgment in the earlier [land registration] case;
- Whether x x x the defendants except for defendant Rufino Aras are the proper parties in the present action;
- Whether x x x the complaint states a cause of action;
- Whether x x x defendants are entitled to their counterclaim, and;
- Whether judgment on the pleadings is allowed or is tenable.[39]

Respondents subsequently filed an Omnibus Motion for Judgment on the Pleadings and/or Summary Judgment.[40] They contended that since petitioners' Answer failed to tender an issue, they having expressly admitted the material allegations in the complaint, particularly paragraphs 4 to 12, a judgment on the pleadings or summary judgment is proper.

Petitioners filed an Opposition Re: Omnibus Motion for Judgment on the Pleadings and/or Summary Judgment and Memorandum Re: Failure of Plaintiff Beata Sayson to Appear in the Pre-trial Conference.[41] They argued that the case cannot be decided based on the pleadings nor through summary judgment considering that the controverted stipulations and issues defined in the Pre-Trial Order must be proven by evidence. In addition, they questioned the Special Power of Attorney (SPA) executed by Beata in Canada empowering her son Roberto Jr. to appear on her behalf in the pre-trial conference. They argued that since said SPA has not been authenticated by a Philippine Consulate official, it is not sufficient authorization and hence, Beata cannot be considered to have attended the pre-trial conference. The case must, therefore, be dismissed insofar as she is concerned.

Ruling of the Regional Trial Court

In resolving respondents' Omnibus Motion for Judgment on the Pleadings and/or Summary Judgment, the RTC

found that petitioners' Answer does not essentially tender an issue since the material allegations of the Complaint were admitted. Hence, said court issued an Order[42] dated May 21, 2001, the dispositive portion of which reads:

Wherefore, finding merit in the motion, judgment is hereby rendered for and in favor of the plaintiffs and against the defendants ordering the revival of the decision of the Court of Appeals promulgated on July 24, 1985 affirming the decree of registration of this Court in the decision of the Land Registration Case No. 0-177 dated March 22, 1979, and of the final Order of this Court dated September 13, 1989 and upon finality of this Order, ordering the issuance of Writ of Possession for the lot made subject of the decision. Without pronouncement as to costs.

SO ORDERED.[43]

Petitioners thus filed a Notice of Appeal[44] which was approved in an Order dated June 06, 2001.[45]

Ruling of the Court of Appeals

Finding no merit in the appeal, the CA denied the same in a Decision[46] dated February 17, 2004. It noted that petitioners' Answer admitted almost all of the allegations in respondents' complaint. Hence, the RTC committed no reversible error when it granted respondents' Motion for Judgment on the Pleadings and/or Summary Judgment. The appellate court likewise found untenable the issue as regards the failure of the complaint to state a cause of action. To the appellate court, petitioners' refusal to vacate the subject property despite the final and executory Decision of the CA in the land registration case and the September 13, 1989 Order of the RTC for them to vacate the same, clearly support respondents' cause of action against them. Also contrary to petitioners' posture, the September 13, 1989 Order is a final order as it finally disposed of the controversy between the parties in the land registration case. The CA likewise found the SPA executed by Beata in favor of Roberto Jr. as valid, hence, she was duly represented during the pre-trial conference. The dispositive portion of said CA Decision reads:

WHEREFORE, premises considered, the present appeal is DENIED. The May 21, 2001 Decision of the Regional Trial Court of Ormoc City, Branch 35 is AFFIRMED.

SO ORDERED.[47]

Their Motion for Reconsideration[48] having been denied in a Resolution[49] dated April 19, 2006, petitioners are now before this Court through the present Petition for Review on Certiorari.

Issues

Petitioners impute upon the CA the following errors:

1. The Honorable Court of Appeals clearly committed serious errors of law in its decision and Resolution dated February 17, 2004 and April 19, 2006 when it affirmed the Order of the Regional Trial Court dated May 21, 2001 and declared that no reversible error was committed by the Regional Trial Court of Ormoc City in granting respondents' motion for judgment on the pleadings and/or summary judgment;
2. The Honorable Court of Appeals clearly committed serious errors of law in its Decision and Resolution dated February 17, 2004 and April 19, 2006 when it affirmed the Order of the Regional Trial Court of Ormoc City dated May 21, 2001 and declared that petitioners' argument that respondents' complaint failed to state a cause of action has no merit.
3. The Honorable Court of Appeals clearly committed serious errors of law when it affirmed the Order of the Regional Trial Court of Ormoc City which ordered the revival of the Judgment of this Court of Appeals in CA-G.R. No. 66541 entitled Beata Sayson and Roberto Sayson vs. Eugenio Basbas, et al., despite the fact that this was not the judgment sought to be revived in Civil Case No. 3312-0;

4. The Honorable Court of Appeals clearly committed serious errors of law in ruling that the duly notarized Special Power of Attorney in favor of Roberto Sayson[,] Jr. is valid and the latter is authorized to represent his mother, Beata Sayson[,] which is contrary to the ruling in the case of ANGELITA LOPEZ, represented by PRISCILLA L. TY vs. COURT OF APPEALS, REGIONAL TRIAL COURT OF QUEZON CITY x x x (G.R. No. 77008, December 29, 1987).[50]

The Parties' Arguments

Petitioners insist that a judgment on the pleadings or a summary judgment

is not proper in this case since the controverted stipulations and the first three issues enumerated in the pre-trial order involve facts which must be threshed out during trial. They also claim that the Complaint for Revival of Judgment states no cause of action because the September 13, 1989 Order which it sought to revive is not the "judgment" contemplated under Section 6, Rule 39 of the Rules of Court and, therefore, cannot be the subject of such an action. Moreover, they argue that the CA Decision in the land registration case should not have been revived as same was not prayed for in the Complaint for Revival of Judgment. Lastly, petitioners assail the SPA which authorized Roberto Jr. to represent his mother, Beata, during the pre-trial conference, it not having been authenticated by a Philippine consulate officer in Canada where it was executed. Citing *Lopez v. Court of Appeals*,[51] they contend that said document cannot be admitted in evidence and hence, Beata was not duly represented during said pre-trial conference. The case, therefore, should have been dismissed insofar as she is concerned.

For their part, respondents point out that the RTC's basis in granting the Motion for Judgment on the Pleadings and/or Summary Judgment was petitioners' admission of practically all the material allegations in the complaint. They aver that Section 1, Rule 34 of the Rules of Court clearly provides that 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 the pleadings. Also, the test for a motion for summary judgment is whether the pleadings, affidavits or exhibits in support of the motion are sufficient to overcome the opposing papers and to justify a finding as a matter of law that there is no defense to the action or the claim is clearly meritorious. And since, as found by the CA, petitioners' Answer did not tender an issue and that there is no defense to the action, the grant of the Motion for Judgment on the Pleadings and/or Summary Judgment was appropriate. Respondents likewise contend that if their prayer in the Complaint is taken in its proper context, it can be deduced that what they were really seeking is the implementation of the CA Decision dated July 24, 1985 and the orders ancillary thereto. With respect to the SPA, they submit that the law does not require that a power of attorney be notarized. Moreover, Section 4, Rule 18 of the Rules of Court simply requires that a representative appear fully authorized "in writing". It does not specify a particular form of authority.

Our Ruling

There is no merit in the petition.

I. The instant case is proper for the rendition of a summary judgment.

Petitioners principally assail the CA's affirmance of the RTC's Order granting respondents' Motion for Judgment on the Pleadings and/or Summary Judgment.

In *Tan v. De la Vega*,[52] citing *Narra Integrated Corporation v. Court of Appeals*,[53] the court distinguished summary judgment from judgment on the pleadings, viz:

The existence or appearance of ostensible issues in the pleadings, on the one hand, and their sham or fictitious character, on the other, are what distinguish a proper case for summary judgment from one for a judgment on

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. On the other hand, in the case of a summary judgment, issues apparently exist - i.e. facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer - but the issues thus arising from the pleadings are sham, fictitious or not genuine, as shown by affidavits, depositions, or admissions. x x x.

Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint. When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate.[54] On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a summary judgment is proper provided that the issue raised is not genuine. "A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial." [55]

a) Judgment on the pleadings is not proper because petitioners' Answer tendered issues.

In this case, we note that while petitioners' Answer to respondents' Complaint practically admitted all the material allegations therein, it nevertheless asserts the affirmative defenses that the action for revival of judgment is not the proper action and that petitioners are not the proper parties. As issues obviously arise from these affirmative defenses, a judgment on the pleadings is clearly improper in this case.

However, before we consider this case appropriate for the rendition of summary judgment, an examination of the issues raised, that is, whether they are genuine issues or not, should first be made.

b) The issues raised are not genuine issues, hence rendition of summary judgment is proper.

To resolve the issues of whether a revival of judgment is the proper action and whether respondents are the proper parties thereto, the RTC merely needed to examine the following: 1) the RTC Order dated September 13, 1989, to determine whether same is a judgment or final order contemplated under Section 6, Rule 39 of the Rules of Court; and, 2) the pleadings of the parties and pertinent portions of the records[56] showing, among others, who among the respondents were oppositors to the land registration case, the heirs of such oppositors and the present occupants of the property. Plainly, these issues could be readily resolved based on the facts established by the pleadings. A full-blown trial on these issues will only entail waste of time and resources as they are clearly not genuine issues requiring presentation of evidence.

Petitioners aver that the RTC should not have granted respondents' Motion for Judgment on the Pleadings and/or Summary Judgment because of the controverted stipulations and the first three issues enumerated in the Pre-trial Order, which, according to them, require the presentation of evidence. These stipulations and issues, however, when examined, basically boil down to questions relating to the propriety of the action resorted to by respondents, which is revival of judgment, and to the proper parties thereto - the same questions which we have earlier declared as not constituting genuine issues.

In sum, this Court holds that the instant case is proper for the rendition of a summary judgment, hence, the CA committed no error in affirming the May 21, 2001 Order of the RTC granting respondents' Motion for Judgment on the Pleadings and/or Summary Judgment.

II. The Complaint states a cause of action.

Petitioners contend that the complaint states no cause of action since the

September 13, 1989 Order sought to be revived is not the judgment contemplated under Section 6, Rule 39 of the Rules of Court. They also aver that the RTC erred when it ordered the revival not only of the September 13, 1989 Order but also of the July 24, 1985 CA Decision, when what was prayed for in the complaint was only the revival of the former.

This Court, however, agrees with respondents that these matters have already been sufficiently addressed by the RTC in its Order of May 9, 1997^[57] and we quote with approval, viz:

The body of the Complaint as well as the prayer mentioned about the executory decision of the Court of Appeals promulgated on July 24, 1985 that had to be finally implemented. So it appears to this Court that the Complaint does not alone invoke or use as subject thereof the Order of this Court which would implement the decision or judgment regarding the land in question. The Rules of Court referring to the execution of judgment, particularly Rule 39, Sec. 6, provides a mechanism by which the judgment that had not been enforced within five (5) years from the date of its entry or from the date the said judgment has become final and executory could be enforced. In fact, the rule states: "...judgment may be enforced by action."

So in this Complaint, what is sought is the enforcement of a judgment and the Order of this Court dated September 13, 1989 is part of the process to enforce that judgment. To the mind of the Court, therefore, the Complaint sufficiently states a cause of action.^[58]

III. Any perceived defect in the SPA would not serve to bar the case from proceeding.

Anent the SPA, we find that given the particular circumstances in the case at bar, an SPA is not even necessary such that its efficacy or the lack of it would not in any way preclude the case from proceeding. This is because upon Roberto Sr.'s death, Roberto Jr., in succession of his father, became a co-owner of the subject property together with his mother, Beata. As a co-owner, he may, by himself alone, bring an action for the recovery of the co-owned property pursuant to the well-settled principle that "in a co-ownership, co-owners may bring actions for the recovery of co-owned property without the necessity of joining all the other co-owners as co-plaintiffs because the suit is presumed to have been filed for the benefit of his co-owners."^[59]

While we note that the present action for revival of judgment is not an action for recovery, the September 13, 1989 Order sought to be revived herein ordered the petitioners, among others, to vacate the subject property pursuant to the final and executory judgment of the CA affirming the CFI's adjudication of the same in favor of respondents. This Order was issued after the failure to enforce the writ of execution and alias writ of execution due to petitioners' refusal to vacate the property. To this Court's mind, respondents' purpose in instituting the present action is not only to have the CA Decision in the land registration case finally implemented but ultimately, to recover possession thereof from petitioners. This action is therefore one which Roberto Jr., as co-owner, can bring and prosecute alone, on his own behalf and on behalf of his co-owner, Beata. Hence, a dismissal of the case with respect to Beata pursuant to Sec. 5,^[60] Rule 18 of the Rules of Court will be futile as the case could nevertheless be continued by Roberto Jr. in behalf of the two of them.

WHEREFORE, the Petition for Review on Certiorari is DENIED and the assailed Decision of the Court of Appeals dated February 17, 2004 and Resolution dated April 19, 2006 in CA-G.R. CV No. 72385 are AFFIRMED.

SO ORDERED.

Corona, C. J., (Chairperson), Leonardo-De Castro, Brion,[*] and Villarama, Jr., JJ., concur.

[*] In lieu of Associate Justice Lucas P. Bersamin per Raffle dated August 8, 2011.

[1] CA rollo, pp. 102-109; penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Godardo A. Jacinto and Lucas P. Bersamin (now a Member of this Court).

[2] Records, pp. 440-442; penned by Judge Fortunito L. Madrona.

[3] CA rollo, p. 121.

[4] See first page of CA Decision dated July 24, 1985 in CA-G.R. No. 66541, records, p. 8.

[5] Id. at 8-13; penned by Associate Justice Leonor Ines Luciano and concurred in by Presiding Justice Ramon G. Gaviola, Jr., and Associate Justices Edgardo P. Caguioa and Ma. Rosario Quetulio-Losa.

[6] See Entry of Judgment, id. at 14.

[7] Id. at 15.

[8] See the (Sheriff's) Progress Report, id. at 16-17.

[9] See RTC Order dated June 16, 1989, id. at 18.

[10] Id. at 21-22.

[11] Id. at 19-20.

[12] Id. at 22.

[13] Id. at 21.

[14] Rules of Court, Rule 39, Sec. 6 provides:

Sec. 6. Execution by motion or by independent action. - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. x x x.

[15] Records, pp. 1-7.

[16] The case was later transferred to Branch 35 of RTC, Ormoc City per Order dated September 22, 1997, id. at 80.

[17] Later amended to read as "Basarte" per Order dated July 3, 1998, id. at 120.

[18] Id. at 30-32.

[19] See the RTC's Order dated May 9, 1997, id. at 49-50.

[20] Id. at 73-77.

[21] Id. at 2-5.

[22] Id. at 1-2

[23] Id. at 5-6.

[24] See Notice of Pre-Trial, *id.* at 85.

[25] See Orders dated March 9, 1998 & May 20, 1998, *id.* at 102 & 112 respectively; Alias Summons dated June 1, 1998, *id.* at 113; and Officer's Return, *id.* at 115. See also the Summons served to the spouses Basarte, *id.* at 148, and the Officer's Return thereof, *id.* at 147, after the spouses' surname was amended to read as spouses Basarte instead as Sabarte.

[26] See Simfronio's Manifestation and Second Manifestation, *id.* at 116-119.

[27] *Id.* at 149-151.

[28] See RTC Order dated February 9, 1999, *id.* at 186.

[29] *Id.* at 253.

[30] *Id.* at 215-216.

[31] *Id.*

[32] *Id.* at 231-233.

[33] One of the Spouses Basarte.

[34] Records, pp. 237-239.

[35] *Id.* at 250.

[36] *Id.*

[37] See 1st page of Pre-Trial Order, *id.* at 348. The Rufino Aras declared in default in said Pre-Trial Order is actually Rosendo Aras. Rufino filed his Answer together with Gervacio and the others.

[38] *Id.* at 348-350.

[39] *Id.* at 349.

[40] *Id.* at 377-382.

[41] *Id.* at 435-439.

[42] *Id.* at 440-442

[43] *Id.* at 442.

[44] *Id.* at 445.

[45] *Id.* at 450.

[46] *Supra* note 1.

[47] CA rollo, p. 93.

[48] *Id.* at 95-101.

[49] *Supra* note 3.

[50] Rollo, p. 19.

[51] 240 Phil. 811 (1987); In this case, an SPA was executed abroad by the real party in interest in favor of a

representative here in the Philippines to initiate an action for ejectment. Finding said SPA to be without the authentication of an officer in the foreign service of the Philippines stationed in that foreign country pursuant to Sec. 25, Rule 132 of the old Rules of Court (now Sec. 24, Rule 132 of the Revised Rules of Court, see footnote 63), this Court declared the same as not admissible in evidence. Hence, the litigation was considered not commenced by the real party-in-interest or by one duly authorized to do so, making the entire proceedings before the lower courts null and void.

[52] G.R. No. 168809, March 10, 2006, 484 SCRA 538, 550-551.

[53] 398 Phil. 733,740 (2000).

[54] Tan v. De la Vega, supra note 52 at 545.

[55] Wood Technology Corporation v. Equitable Banking Corporation, 492 Phil.106, 116 (2005).

[56] Particularly the (1) Complaint, records, pp. 1-7; (2) Answer, id. at 73-77; (3) respondents' Manifestation with Prayer, id. at 231-233; and (4) petitioners' Counter-Manifestation, id. at 237-239.

[57] Id. at 49-50.

[58] Id. at 49.

[59] Carandang v. Heirs of De Guzman, G.R. No. 160347, November 29, 2006, 508 SCRA 469, 487 citing Baloloy v. Hular, 481 Phil. 398, (2004) and Adlawan v. Adlawan, G.R. No. 161916, January 20, 2006, 479 SCRA 275, 283.

[60] Sec. 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be caused for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. x x x.

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