MEMORACION Z. CRUZ, REPRESENTED BY EDGARDO Z. CRUZ, PETITIONER, VS. OSWALDO Z. CRUZ, RESPONDENT.

G.R. No. 173292. September 01, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Court of Appeals' (CA) Decision[2] dated 20 December 2005 and Resolution dated 21 June 2006 in CA-G.R. CV No. 80355. The CA affirmed with modification the Order[3] dated 2 June 1997 of the Regional Trial Court of the National Capital Judicial Region, Branch 30, Manila (RTC).

The Antecedent Facts

The undisputed facts, as summarized by the Court of Appeals, are as follows:

> On October 18, 1993, Memoracion Z. Cruz filed with the Regional Trial Court in Manila a Complaint against her son, defendant-appellee Oswaldo Z. Cruz, for "Annulment of Sale, Reconveyance and Damages."
>
> Memoracion claimed that during her union with her common-law husband (deceased) Architect Guido M. Cruz, she acquired a parcel of land located at Tabora corner Limay Streets, Bo. Obrero, Tondo Manila; that the said lot was registered in her name under TCT No. 63467 at the Register of Deeds of Manila; that sometime in July 1992, she discovered that the title to the said property was transferred by appellee and the latter's wife in their names in August 1991 under TCT No. 0-199377 by virtue of a Deed of Sale dated February 12, 1973; that the said deed was executed through fraud, forgery, misrepresentation and simulation, hence, null and void; that she, with the help of her husband's relatives, asked appellee to settle the problem; that despite repeated pleas and demands, appellee refused to reconvey to her the said property; that she filed a complaint against appellee before the office of the Barangay having jurisdiction over the subject property; and that since the matter was unsettled, the barangay x x x issued x x x a certification to file [an] action in court, now the subject of controversy.
>
> After Memoracion x x x finished presenting her evidence in chief, she died on October 30, 1996. Through a Manifestation, Memoracion's counsel, Atty. Roberto T. Neri, notified the trial court on January 13, 1997 of the fact of such death, evidenced by a certificate thereof.
>
> For his part, appellee filed a Motion to Dismiss on the grounds that (1) the plaintiff's reconveyance action is a personal action which does not survive a party's death, pursuant to Section 21, Rule 3 of the Revised Rules of Court, and (2) to allow the case to continue would result in legal absurdity whereby one heir is representing the defendant [and is a] co-plaintiff in this case.
>
> On June 2, 1997, the trial court issued the appealed Order in a disposition that reads:
> "Wherefore, in view of the foregoing, this case is ordered dismissed without prejudice to the prosecution thereof in the proper estate proceedings."

On October 17, 1997, Memoracion's son-heir, Edgardo Z. Cruz, manifested to the trial court that he is retaining the services of Atty. Neri for the plaintiff. Simultaneously, Atty. Neri filed a Motion for Reconsideration of the June 2, 1997 Order. However, the said motion was subsequently denied by Acting Presiding Judge Cielito N. Mindaro-Grulla [on October 31, 2000].

Thereafter, Edgardo Cruz, as an heir of Memoracion Cruz, filed a notice of appeal in behalf of the deceased plaintiff, signed by Atty. Neri, but the appeal was dismissed by Judge Mindaro-Grulla, [stating that] the proper remedy being certiorari under Rule 65 of the Rules of Court. On appellant's motion for reconsideration, Judge Lucia Pena Purugganan granted the same, stating that the remedy under the circumstances is ordinary appeal.[4]

The Court of Appeals' Ruling

Petitioner Memoracion Z. Cruz, represented by Edgardo Z. Cruz, filed with the Court of Appeals a Petition for Review under Rule 45 of the 1997 Revised Rules of Civil Procedure. On 20 December 2005, the CA rendered judgment affirming with modification the RTC decision. We quote the dispositive portion of the CA's decision below.

> WHEREFORE, the appealed Order is AFFIRMED, with MODIFICATION. The trial court's directive as to the prosecution of the action in the proper estate proceedings is DELETED.
>
> SO ORDERED.[5]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution of 21 June 2006.[6]

Hence, this appeal.

The Issues

The issues for resolution in this case are:

- Whether the Court of Appeals erred in ruling that Memoracion Z. Cruz's Petition for Annulment of Deed of Sale, Reconveyance and Damages is a purely personal action which did not survive her death; and

- Whether the Court of Appeals erred in affirming with modification the RTC Order dismissing the Petition for Annulment of Deed of Sale, Reconveyance and Damages.

The Court's Ruling

We find the appeal meritorious.

The Petition for Annulment of Sale, Reconveyance
and Damages survived the death of petitioner
The criterion for determining whether an action survives the death of a petitioner was elucidated in Bonilla v. Barcena,[7] to wit:

> The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.[8]

If the case affects primarily and principally property and property rights, then it survives the death of the plaintiff or petitioner. In Sumaljag v. Literato,[9] we held that a Petition for Declaration of Nullity of Deed of Sale of Real

Property is one relating to property and property rights, and therefore, survives the death of the petitioner. Accordingly, the instant case for annulment of sale of real property merits survival despite the death of petitioner Memoracion Z. Cruz.

The CA erred in affirming RTC's dismissal of the
Petition for Annulment of Deed of Sale,
Reconveyance and Damages

When a party dies during the pendency of a case, Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure necessarily applies, viz:

> Sec. 16. Death of 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 foregoing section is a revision of Section 17, Rule 3 of the old Rules of Court:

> SEC. 17. Death of party. - After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. 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 guardian ad litem for the minor heirs.

If the action survives despite death of a party, it is the duty of the deceased's counsel to inform the court of such death, and to give the names and addresses of the deceased's legal representatives. The deceased may be substituted by his heirs in the pending action. As explained in Bonilla:

> x x x Article 777 of the Civil Code provides "that the rights to the succession are transmitted from the moment of the death of the decedent." From the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law. The moment of death is the determining factor when the heirs acquire a definite right to the inheritance whether such right be pure or contingent. The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings. When [plaintiff], therefore, died[,] her claim or right to the parcels of land x x x was not extinguished by her death but was transmitted to her heirs upon her death. Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case. There is, therefore, no

> reason for the respondent Court not to allow their substitution as parties in interest for the deceased plaintiff.[10]

If no legal representative is named by the counsel of the deceased, or the legal representative fails to appear within a specified period, it is the duty of the court where the case is pending to order the opposing party to procure the appointment of an executor or administrator for the estate of the deceased. The reason for this rule is to protect all concerned who may be affected by the intervening death, particularly the deceased and his estate.[11]

In the instant case, petitioner (plaintiff) Memoracion Z. Cruz died on 30 October 1996. Her counsel, Atty. Roberto T. Neri, notified the trial court of such death on 13 January 1997, through a Manifestation stating thus:

> COMES NOW the undersigned counsel and to this Honorable Court respectfully gives notice that the plaintiff, Memoracion Z. Cruz, died on October 30, 1996, in Manila as shown by a Certificate of Death, a certified true copy of which is hereto attached as Annex "A" hereof.
>
> The legal representative of the deceased plaintiff is her son EDGARDO CRUZ whose address is at No. 3231-E Tabora St., Bo. Obrero, Tondo, Manila.
>
> x x x x[12]

On 24 January 1997, respondent (defendant) Oswaldo Z. Cruz moved to dismiss the case alleging that it did not survive Memoracion's death. The RTC granted the motion to dismiss in the assailed Order dated 2 June 1997.

We rule that it was error for the RTC to dismiss the case. As mentioned earlier, the petition for annulment of deed of sale involves property and property rights, and hence, survives the death of petitioner Memoracion. The RTC was informed, albeit belatedly,[13] of the death of Memoracion, and was supplied with the name and address of her legal representative, Edgardo Cruz. What the RTC could have done was to require Edgardo Cruz to appear in court and substitute Memoracion as party to the pending case, pursuant to Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure, and established jurisprudence.

We note that on 17 October 1997, Edgardo Cruz filed with the RTC a Manifestation, stating that he is retaining the services of Atty. Roberto T. Neri. We quote:[14]

> UNDERSIGNED HEIR of the late Memoracion Z. Cruz respectfully manifests that he is retaining the services of ATTY. ROBERTO T. NERI as counsel for the plaintiff.
>
> (Sgd.) EDGARDO Z. CRUZ
> Plaintiff

Consistent with our ruling in Heirs of Haberer v. Court of Appeals,[15] we consider such Manifestation, signed by Memoracion's heir, Edgardo Cruz, and retaining Atty. Neri's services as counsel, a formal substitution of deceased Memoracion by her heir, Edgardo Cruz. It also needs mention that Oswaldo Cruz, although also an heir of Memoracion, should be excluded as a legal representative in the case for being an adverse party therein.[16]

WHEREFORE, we GRANT the petition. We REVERSE the Court of Appeals' Decision dated 20 December 2005 and Resolution dated 21 June 2006 in CA-G.R. CV No. 80355. We REMAND this case to the Regional Trial Court of the National Capital Judicial Region, Branch 30, Manila, for further proceedings.

SO ORDERED.

Nachura, Bersamin,[*] Abad, and Mendoza, JJ., concur.

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[*] Designated additional member per Special Order No. 882 dated 31 August 2010.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Portia Aliño- Hormachuelos and Mariano Del Castillo (now a member of the Supreme Court), concurring.

[3] Issued by RTC Judge Senecio O. Ortile.

[4] Rollo, pp. 32-33. Citations omitted.

[5] Id. at 39.

[6] Id. at 43-44.

[7] 163 Phil. 516 (1976). See also Torres v. Rodellas, G.R. No. 177836, 4 September 2009, 598 SCRA 390.

[8] Id. at 521, citing Iron Gate Bank v. Brady, 184 U.S. 665, 22 SCT 529, 46 L.ed. 739 and Wenber v. St. Paul City Co., 97 Feb. 140 R. 39 C.C.A. 79.

[9] G.R. No. 149787, 18 June 2008, 555 SCRA 53, 60.

[10] Bonilla v. Barcena, supra note 7 at 520-521. Citations omitted.

[11] Sumaljag v. Literato, supra note 9 at 62.

[12] Records, pp. 172-173.

[13] The counsel's late filing of the Notice of Death of Memoracion Z. Cruz was not questioned by defendant Oswaldo Cruz.

[14] Records, p. 196.

[15] 192 Phil. 62, 73 (1981).

[16] In Sumaljag v. Literato, supra note 9, the deceased's sister, although a legal heir, was excluded as a legal representative for being one of the adverse parties in the pending cases.

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