CONCORDIA MEDEL GOMEZ, PETITIONER, VS. CORAZON MEDEL ALCANTARA, RESPONDENT.

G.R. No. 179556. February 13, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to set aside (1) the Decision[1] dated 31 May 2007 of the Court of Appeals in CA-G.R. SP No. 96790, which dismissed, on the ground of res judicata, Civil Case No. 04-111160 before the Regional Trial Court (RTC) of Manila, Branch 27; and (2) the Resolution[2] dated 28 August 2007 of the appellate court denying the Motion for Reconsideration of herein petitioner Concordia Medel Gomez.

This case involves a dispute over the ownership of a parcel of land with an area of 373 square meters, denominated as Lot No. 2259-A, located in Lamayan, Sta. Ana, Manila.

On 15 July 1997, petitioner filed a Complaint[3] for specific performance and damages against respondent Corazon Medel Alcantara, docketed as Civil Case No. 97-84-159, and raffled to the RTC of Manila, Branch 50. Petitioner made the following allegations in her Complaint.

Petitioner is a daughter of the spouses Ponciano and Isabel Medel. Aside from petitioner, the spouses Ponciano and Isabel Medel had three other children, namely, Francisco, Teodora, and Margarita. Respondent is Margarita's eldest daughter.

Sometime in 1950, petitioner's father Ponciano demolished and renovated the dilapidated house standing on Lot No. 2259-B. Ponciano then told petitioner that he was giving her not just Lot No. 2259-B and the house which stood thereon, but also the adjacent Lot No. 2259-A with an area of 373 square meters as his wedding gift, and that she was already the owner of the said properties. Consequently, petitioner transferred to her home at Lot No. 2259-B with an area of 800 square meters[4] in 1951 and raised her family there.

Apparently already intending to distribute his assets to his children while he was still alive, Ponciano, with his wife Isabel's consent, executed a Deed of Absolute Sale dated 2 August 1962, involving several parcels of land in San Andres, Manila, in favor of his four children. Francisco acquired a parcel of land with an area of 1,000 square meters, while Teodora and Margarita each received a parcel of land measuring 1,027 square meters. Petitioner received less in the distribution of the properties by her father, as it was her father's intention that Lot No. 2259-A would ultimately be given to her.

In 1967, Ponciano constructed a new house on Lot No. 2259-A. It was agreed that the new house and Lot No. 2259-A on which it stood would be initially registered in the name of petitioner's sister, Teodora, considering that she was the second eldest child, and still single and living with her parents. Ponciano, thus, authorized the transfer of the title to Lot No. 2259-A from his name to Teodora's. It was fully understood, however, that Teodora would hold the title to Lot No. 2259-A only in trust for petitioner. Petitioner's parents, Ponciano and Isabel, and sister,

Teodora, eventually transferred to the new house on Lot No. 2559-A, while petitioner and her family remained at their old house on Lot No. 2559-B.

Petitioner's mother, Isabel, died in 1969. Upon the death of his wife, Ponciano became sickly and weak, such that he was no longer able to supervise his properties. In due time, Ponciano made Teodora the administrator of all his properties, entrusting her with the pertinent documents relating to said properties, among other valuables.

Ponciano passed away in 1972. After his death, Teodora lived alone at the house on Lot No. 2259-A. Not too long thereafter, respondent and her children moved in to live with Teodora.

In 1993, petitioner discovered that the title to Lot No. 2259-A had been transferred to respondent by virtue of a Deed of Donation[5] allegedly executed by Teodora in favor of respondent on 15 December 1980. Petitioner was totally unaware of the supposed donation, for it was done in complete secrecy that not even any of their other relatives knew about it.

Upon learning of the transfer of the title to Lot No. 2259-A to respondent's name, petitioner tried to settle the matter amicably with respondent, but to no avail. Hence, petitioner was compelled to institute on 15 July 1997, Civil Case No. 97-84159 for specific performance and Damages before the RTC of Manila, Branch 50, against respondent, praying mainly that she be declared as the owner of Lot No. 2259-A.

Initial trial was conducted by the RTC in Civil Case No. 97-84159, but it was suspended due to the retirement of the presiding judge at said court. Judge Concepcion Alarcon-Vergara took over the case and set the same for hearing on 31 May 2000.

Unfortunately, petitioner's counsel, as well as respondent and her counsel, failed to appear at the 31 May 2000 hearing.[6] Judge Alarcon-Vergara then, in her Order dated 31 May 2000, dismissed Civil Case No. 97-84159 for petitioner's failure to prosecute. Judge Alarcon-Vergara's Order reads:

> Records disclose that the testimony of the plaintiff was not completed at the time this case was scheduled for trial during the incumbency of the former Presiding Judge of Branch 50, for the reason, as the Order states, that her lawyer was newly hired. As seen from the records, plaintiff was not able to complete her testimony due to her own fault. The lawyer hired by her as replacement of her former counsel entered his appearance on January 8, 1999. The initial trial at which she testified was had on March 12, 1999, or after over two (2) months from the time her said lawyer entered his appearance, such that the resetting of the case for the reason that her counsel was "newly hired" appears to be unfounded. Said plaintiff complained about the alleged inaction of the Court and even gave the impression that the Court was blameworthy when she said that all of those who have cases in said Branch were suffering from sleepless nights, anxiety and tension.
>
> As soon as the Court received the referral, it lost no time in setting the case and forthwith served the notices to both parties thru their counsel. Both lawyers had to be served notices by the Process Server of Branch 49 as Branch 50 has not up to this issuance, been provided with a Process Server.
>
> At the scheduled trial today, plaintiff was not again ready. Plaintiff, therefore, cannot properly be said as helping the speedy disposition of her case, much less could she complain about the delay for which she was contributory.
>
> Wherefore, for failure of plaintiff to continue with her evidence in chief today, the Court is constrained to order her testimony thus far adduced stricken off the record and this case dismissed for plaintiff's failure to prosecute the same.
>
> Let a copy of this Order be furnished the Office of the Honorable Court Administrator.[7]

Petitioner's counsel, Atty. Jaime B. Lumasag, Jr. filed a Motion for Reconsideration[8] of the 31 May 2000 Order

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of the RTC in Civil Case No. 97-84159, alleging that his failure to appear at the hearing set for that day was due to the very short notice given him. The Order setting Civil Case No. 97-84159 for hearing on 31 May 2000 was issued by the RTC only on 26 May 2000 and was received at Atty. Lumasag's office in the afternoon of the same day. Atty. Lumasag personally came to know of the notice of hearing in Civil Case No. 97-84159 on 30 May 2000 and the hearing was already scheduled for the next day, 31 May 2000.[9] Unfortunately, Atty. Lumasag already had a previous commitment to appear on the same date at the RTC of Malolos; hence, he filed with the RTC of Manila an urgent motion to transfer the date of hearing in Civil Case No. 97-84159.

Atty. Lumasag set his Motion for Reconsideration for hearing on 30 June 2000 but, unfortunately, he came late for the said hearing. Judge Alarcon-Vergara immediately issued an Order denying petitioner's Motion for Reconsideration and declaring her Order dated 31 May 2000 final.

According to the RTC Order dated 30 June 2000:

> Today is June 30, 2000 and it is already past 8:30 a.m. Atty. Jaime Lumasag, in plaintiff's Motion for Reconsideration, specially the greeting portion of said motion, manifested that he will present his oral arguments today. This was his chosen date. His failure to appear on the exact time that he prayed in his motion for him to present his oral arguments, and considering that there was already an order dismissing this case for failure to prosecute, the Court is constrained to order, as it is hereby orders, the denial of said Motion for Reconsideration and this order is final.[10]

On 19 December 2000, RTC Branch 50 in Civil Case No. 97-84159 issued another Order which reads:

> The records show that plaintiff's counsel received a copy of the Order denying the Motion for Reconsideration dated June 30, 2000, on September 5, 2000. Thus, plaintiff had until September 20, 2000 within which to elevate the dismissal to the higher Courts. Failing to file any appeal or petition with the higher Courts, the dismissal had already attained finality.[11]

Petitioner no longer appealed the dismissal of Civil Case No. 97-84159 to the Court of Appeals.

Less than four years later, on 13 October 2004, petitioner filed another Complaint[12] for recovery of share of inheritance with damages against respondent, docketed as Civil Case No. 04-111160, which was raffled to the RTC of Manila, Branch 27.

In answer, respondent moved for the dismissal of petitioner's Complaint in Civil Case No. 04-111160. She set up, among others, the affirmative defense that the cause of action in Civil Case No. 04-111160 was barred by the prior judgment in Civil Case No. 97-84159, which was dismissed by the RTC of Manila, Branch 50, for petitioner's failure to prosecute. Respondent likewise pointed out that petitioner was actually seeking the same relief in Civil Case No. 04-111160 which she had earlier sought in Civil Case No. 97-84159. Respondent claimed that way back 15 November 1967, Ponciano and Isabel Medel sold Lot No. 2259-A to their daughter Teodora. OCT No. 5485,[13] in the name of Ponciano married to Isabel Medel, was cancelled; and a new title, TCT No. 90423,[14] was issued in favor of Teodora. On 15 December 1980, Teodora executed a Deed of Donation[15] over Lot No. 2259-A in favor of respondent. TCT No. 90423 in the name of Teodora was subsequently cancelled and a new one, TCT No. 155290,[16] was issued to respondent.

On 18 October 2005, Judge Teresa P. Soriaso of the RTC of Manila, Branch 27, issued an Order[17] in Civil Case No. 04-111160 denying the Motion to dismiss filed by the respondent which states:

> Considering that the Order dated October 10, 2005 was an inadvertence as it ordered another hearing on the affirmative defense on October 14, 2005 when one had already been made on July 22, 2005 and considering further that the assertions in the motions are evidentiary in nature and, therefore, will require a full-blown hearing before the same could properly be determined by the Court, the motion to dismiss (Affirmative

> Defenses) is denied.
>
> Set this case for Pre-Trial on October 28, 2005 at 8:30 a.m.[18]

In another Order dated 1 August 2006,[19] Judge Soriaso denied respondent's Motion for Reconsideration of her 18 October 2005 Order.

Respondent filed before the Court of Appeals a Petition for Certiorari[20] under Rule 65 with prayer for issuance of Temporary Restraining Order, docketed as CA-G.R. SP No. 96790. Respondent assailed in her Petition the Orders dated 18 October 2005 and 1 August 2006 of Judge Soriaso refusing to dismiss Civil Case No. 04-111160.

On 31 May 2007, the Court of Appeals promulgated its Decision sustaining respondent's position as follows:

> There is no question that the parties, subject matter and causes of action in the prior action, Civil Case No. 97-84159 and the present action, Civil Case No. 04-111160 are the same or at least identical. Furthermore, the dismissal of [herein petitioner's] first complaint in Civil Case No. 97-84159 for failure to prosecute was not appealed, hence, it became final and executory several years before [petitioner] filed her second complaint. The dismissal of the first complaint had, as Rule 17, Section 3 clearly provides, the effect of an adjudication upon the merits, the RTC - Branch 50, not having declared otherwise.[21]

The Court of Appeals, thus, decreed:

> WHEREFORE, in view of the foregoing, the instant petition is GRANTED. The 18 October 2005 and 01 August 2006 Orders of the Regional Trial Court of Manila, Branch 27 in Civil Case No. 04-111160 are REVERSED and SET ASIDE.
>
> Accordingly, Civil Case No. 04-111160 is hereby DISMISSED on the ground of res judicata.[22]

Petitioner is presently before this Court raising the following issues:

> A.
>
> WHETHER OR NOT THE PRINCIPLE OF RES JUDICATA APPLIED IN THE PRESENT CASE CONSIDERING THAT THERE WAS NO TRIAL ON THE MERITS IN THE PRIOR ACTION, CIVIL CASE NO. 97-84159, BUT THE SAME WAS DISMISSED DUE TO TECHNICALITY.
>
> B.
>
> WHETHER OR NOT PETITIONER WAS DEPRIVED OF HER DAY IN COURT WHEN SHE WAS PREVENTED FROM PRESENTING HER CASE DUE TO THE GROSS NEGLIGENCE OF HER FORMER COUNSEL.[23]

The relevant rule in this case is Section 3, Rule 17 of the Rules of Court, which provides:

> SEC. 3. Dismissal due to fault of plaintiff. -- If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The afore-quoted provision enumerates the instances when a complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear on the date for the presentation of his evidence in chief on the complaint; (2) if he fails to prosecute his action for an unreasonable length of time; or (3) if he fails to comply with the Rules or any order of the court. The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and

is necessarily understood to be with prejudice to the filing of another action, unless otherwise provided in the order of dismissal. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice.

It is clear from the Order dated 31 May 2000 that Civil Case No. 97-84159 was dismissed by the RTC of Manila, Branch 50, motu proprio, for failure of petitioner and her counsel to attend the scheduled hearing on said date. Since the order of dismissal did not contain any qualification whatsoever, the general rule under Section 3, Rule 17 of the Rules of Court shall apply and it shall be deemed to be an adjudication on the merits and with prejudice to the filing of another action.[24]

This Court is not unaware that, although the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court, that judgment, however, must not be abused. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence of the plaintiff to proceed therein. Stress must also be laid upon the official directive that courts must endeavor to convince parties in a civil case to consummate a fair settlement and to mitigate damages to be paid by the losing party who has shown a sincere desire for such give-and-take.[25]

Truly, the Court has held in the past that a court may dismiss a case on the ground of non prosequitur, but the real test of the judicious exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, i.e., equivalent to default or non-appearance in the case, the courts should consider lesser sanctions which would still amount to achieving the desired end. In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.[26]

Nonetheless, the Court can no longer delve into the legality and validity of the Order dated 31 May 2000 of the RTC of Manila, Branch 50, dismissing Civil Case No. 97-84159 for petitioner's failure to prosecute. Petitioner no longer appealed the denial of her Motion for Reconsideration of the said order of dismissal, thus, allowing it to become final and executory. Having failed to appeal from that judgment, petitioner may not abuse court processes by re-filing the same case to obviate the conclusive effects of dismissal. It now operates as res judicata.[27]

Based on the principle of res judicata, the petitioner is barred in another action (involving the same subject matter, parties and issues) from raising a defense and from asking for a relief inconsistent with an order dismissing an earlier case with prejudice.[28]

The requisites for res judicata to apply are: (1) the former judgment must be final; (2) the court which rendered said judgment or Order must have jurisdiction over the subject matter and the parties; (3) said judgment or order must be on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and cause of action.

All the requisites of res judicata are present in this case.

For petitioner's failure to file an appeal from the order of dismissal dated 31 May 2000 by the RTC in Civil Case No. 97-84159, the order attained finality. The jurisdiction of the trial court to issue the order of dismissal is not in issue in this case. The order of dismissal in Civil Case No. 97-84159 is considered an adjudication on the merits applying Rule 17, Section 3 of the Rules of Court. There is no question that both Civil Case No. 04-111160 and Civil Case No. 97-84159 involved the same parties, subject matter and cause of action. Civil Case No. 97-84159

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and Civil Case No. 04-111160 indubitably involve the same parties, herein petitioner and respondent. Both cases likewise revolve around the dispute between petitioner and respondent over Lot No. 2259-A. Reliefs[29] sought by petitioner in both complaints are also identical and are not lost to this Court.

To allow Civil Case No. 04-111160 is to effectively reinstate Civil Case No. 97-84159, consequently circumventing the final order dismissing the latter case with prejudice.

Lastly, petitioner cannot claim that she was deprived of due process with the dismissal of Civil Case No. 04-111160. The right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense. Petitioner had the opportunity to be heard and submit evidence when she filed her first case, Civil Case No. 97-84159. Unfortunately, petitioner and her counsel failed to make use of the said opportunity, therefore losing the same due to their lack of diligence. It must be emphasized that the court is also duty-bound to protect the right of respondent to a just and speedy resolution of the case against her.

In Ko v. Philippine National Bank,[30] this Court upheld the dismissal of the complaint on the ground of lack of interest to prosecute for failure of therein petitioner and the latter's counsel to attend a scheduled trial. The Court explained therein that:

> In every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him considering that any delay in the proceedings entail prolonged anxiety and valuable time wasted.
>
> x x x x
>
> Petitioners had the opportunity to present their case and claim the relief they seek. But their inadvertence and lack of circumspect renders the trial court's order dismissing their case final and executory.

In the fairly recent case of Pasiona, Jr. v. Court of Appeals,[31] this Court struck down the argument that the aggrieved parties were denied due process of law, because they had the opportunity to be heard at some point in the proceedings, even if they had not been able to fully exhaust all the remedies available by reason of their counsel's negligence or mistake. Thus, in Dela Cruz v. Andres,[32] the Court held that "where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the essence of due process." In the earlier case of Producers Bank of the Philippines v. Court of Appeals,[33] the decision of the trial court attained finality by reason of counsel's failure to timely file a notice of appeal, and such negligence did not deprive petitioner of due process of law. As elucidated by the Court in said case, to wit:

> "The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. x x x. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process."
>
> Verily, so long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process. x x x. (Emphases supplied.)

Also, in Victory Liner, Inc. v. Gammad,[34] the Court held that:

> The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. x x x. (Emphasis supplied.)

Wherefore, premises considered, the instant Petition is denied for lack of merit and the Decision dated 31 May

2007 and Resolution dated 28 August 2007 of the Court of Appeals in CA-G.R. SP No. 96790 are affirmed. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Arturo Tayag with Associate Justices Martin S. Villarama, Jr. and Hakim S. Abdulwahid, concurring. Rollo, pp. 9-17.

[2] Rollo, p. 7.

[3] Id. at 45.

[4] Id. at 25.

[5] Id. at 41.

[6] Id. at 27.

[7] Id. at 53-54.

[8] Id. at 55.

[9] Id. at 27.

[10] Id. at 57.

[11] Id. at 93.

[12] Id. at 58.

[13] Id. at 90.

[14] Id. at 92.

[15] Id. at 41.

[16] Id. at 50.

[17] Id. at 63.

[18] Id. at 63.

[19] Id. at 64.

[20] CA rollo, p. 2.

[21] Rollo, p. 14.

[22] Id. at 16.

[23] Id. at 194-195.

[24] Cruz v. Court of Appeals, G.R. No. 164797, 13 February 2006, 482 SCRA 379, 388.

[25] Belonio v. Rodriguez, G.R. No. 161379, 11 August 2005, 466 SCRA 557, 580.

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[26] Rizal Commercial Banking Corporation v. Magwin Marketing Corporation, 450 Phil. 721, 741-742 (2003).

[27] Luzon Development Bank v. Conquilla, G.R. No. 163338, 21 September 2005, 470 SCRA 533, 558.

[28] Heirs of Juana Gaudiane v. Court of Appeals, 469 Phil. 271, 282-283 (2004).

[29] Petitioner prayed in Civil Case No. 97-84159:

WHEREFORE, after due hearing, it is most respectfully prayed that -

1. An order be issued of this Honorable Court declaring/affirming the ownership and the possession of the subject premises at 2599 Lamayan Street, Sta. Ana, Manila;
2. The Defendant be required to surrender TCT No. 155290 with the Office of Register of Deeds for cancellation. Should she fail and refuse, an order be required against the Register of Deeds to cancel the same and issue an alias title in the name of Plaintiff, with all fees and expenses to be paid by Defendant;
3. An order be issued nullifying TCT No. 155290;
4. That Defendant be required to pay:

a) P30,000 as attorney's fees plus cost of suit;
b) P100,000 and another P80,000 as moral damages and exemplary damages. (Rollo, p. 48.)

On the other hand, in Civil Case No. 04-11160, petitioner prayed:

WHEREFORE, it is most respectfully prayed of this Honorable Court that after hearing the evidence, judgment be rendered on the following:

1. Declare plaintiff as the owner of the property formerly covered by TCT No. 5485 and now covered by TCT No. 155290 situated at No. 2599 Lamayan St., Sta. Ana, Manila, as part of her inheritance;
2. Order the private Defendant to surrender the owners copy of TCT No. 155290 to the Register of Deeds of Manila for cancellation and issuance of a new title in the name of the plaintiff;
3. Order private defendant to pay plaintiff moral damages of P20,000.00;
4. Order private defendant to pay exemplary damages of P10,000.00. (Rollo, p. 60.)

[30] G.R. Nos. 169131-32, 20 January 2006, 479 SCRA 298, 305-306.

[31] G.R. No. 165471, 21 July 2008, 559 SCRA 137, 148-149.

[32] G.R. No. 161864, 27 April 2007, 522 SCRA 585, 590.

[33] 430 Phil. 812, 825-826 (2002).

[34] G.R. No. 159636, 25 November 2004, 444 SCRA 355, 363.

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