

**CEFERINO S. CABREZA, JR., BJD HOLDINGS CORP., REPRESENTED BY
ATTY. MANUEL DULAY, PETITIONERS, VS. AMPARO ROBLES
CABREZA, RESPONDENTS.**

G.R. No. 181962. January 16, 2012

Ponente: SERENO, J.

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SERENO, J.:

Before us is a Petition seeking to annul the Court of Appeals' Decision that reversed a lower court's dismissal of a Complaint for declaration of nullity of the Deed of Sale of a conjugal dwelling on the ground of *litis pendentia*.

On 3 January 2001, the Regional Trial Court of Pasig Branch 70 (RTC Br. 70) in JDRC Case No. 3705 declared void *ab initio* the marriage between Ceferino Cabreza, Jr. (Ceferino) and Amparo Cabreza (Amparo) and ordered the dissolution and liquidation of the conjugal partnership in accordance with Article 129 of the Family Code.[1] When this Decision became final, Ceferino moved that their only conjugal property, the conjugal home, be sold and the proceeds distributed as mandated by law. RTC Br. 70 granted his Motion in a 26 May 2003 Order which became final when the Supreme Court (SC) dismissed, on technicalities,[2] Amparo's Petition questioning the said Order.

Ceferino thereafter filed an Omnibus Motion (1) to approve the Deed of Absolute Sale (Deed of Sale); (2) to authorize petitioner-movant to sign the Deed of Sale for and on behalf of Amparo; and (3) to order the occupants of the premises to vacate the property. Despite notice to Amparo, only Ceferino and his counsel appeared during the scheduled hearing on the Motion. The Omnibus Motion of Ceferino was granted by RTC Br. 70 on 2 October 2003.[3] Hence, for himself and on behalf of Amparo, he executed the Deed of Sale in favor of BJD Holdings Corporation. He then filed a Motion for Writ of Possession and to Divide the Purchase Price, which RTC Pasig Branch 70 granted in its 12 May 2004 Order.

In response to RTC Br. 70's issuance of a Writ of Possession, followed by a 30 June 2004 Notice to Vacate, Amparo filed a Motion to Hold in Abeyance the Writ of Possession and Notice to Vacate, arguing that (1) the parties had another conjugal lot apart from the conjugal dwelling; and (2) under Article 129 of the Family Code,[4] the conjugal dwelling should be adjudicated to her as the spouse, with whom four of the five Cabreza children were staying. RTC Br. 70 denied her Motion and the Court of Appeals (CA) upheld the denial, prompting her to file with the SC a Petition for Review of this CA Decision, docketed as G.R. No. 171260.

On 11 September 2009, the SC in G.R. No. 171260 denied Amparo's Petition[5] on the ground that granting it would modify the already final 26 May 2003 Order of RTC Br. 70 authorizing the sale of the family home. As the facts upon which Amparo based her argument against RTC Br. 70's issuances (Order of Possession, Writ of Possession and Notice to Vacate) were already operative when she questioned the 26 May 2003 Order, she should have raised her argument then. It would be unfair to allow her to raise the said argument now in the guise of questioning the subsequent implementing Orders of RTC Br. 70. Meanwhile, her allegation that there is another conjugal property other than the subject property is a question of fact not proper for a Rule 45 petition. Also, the

factual finding of both RTC Br. 70 and the CA that there was only one conjugal property was conclusive upon the parties. The SC Decision in G.R. No. 171260 became final and executory on 5 January 2010.

On 26 January 2005 or during the pendency of the CA Petition, which culminated in G.R. No. 171260, Amparo filed with the Pasig RTC, Branch 67 (RTC Br. 67) a Complaint (docketed as Civil Case No. 70269) to annul the Deed of Absolute Sale for being void due to lack of her consent thereto.[6] RTC Br. 67 dismissed the Complaint with prejudice, on the basis of *litis pendentia* and forum shopping.[7]

Amparo appealed to the CA, which reversed the Resolution of RTC Br. 67. Holding that there was no *litis pendentia* and therefore no forum shopping, the appellate court directed that the case be remanded for trial on the merits.[8]

Ceferino moved for reconsideration of the CA ruling. When his Motion was denied, he filed the present Petition for Review under Rule 45, docketed as G.R. No. 181962, arguing that the CA erred in reversing RTC Br. 67's dismissal of the Complaint for Declaration of Nullity of the Deed of Absolute Sale filed by Amparo during the pendency of her Petition for Certiorari to nullify the Writ of Possession on the grounds of *litis pendentia* and forum shopping.

We find merit in the Petition.

The following requisites must be present for the proper invocation of *litis pendentia* as a ground for dismissing an action:

- Identity of parties or representation in both cases;
- Identity of rights asserted and relief prayed for, the relief being founded on the same facts and the same basis; and
- Identity of the two preceding particulars, such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[9]

Regarding the first requisite, there is no dispute that the two cases have substantially the same parties.

Anent the second requisite, the CA correctly noted that to determine whether there is identity of the rights asserted and reliefs prayed for grounded on the same facts and bases, the following tests may be utilized: (1) whether the same evidence would support and sustain both the first and the second causes of action; or (2) whether the defenses in one case may be used to substantiate the complaint in the other.[10]

However, we do not agree with the CA's conclusion that there is no identity of rights asserted and reliefs prayed for in the two cases following the application of these tests. Instead, we find that there is substantial identity of rights asserted and reliefs prayed for between the two cases.

The CA held that using the first test, the evidence in the Complaint for Declaration of Nullity of the Deed of Sale would be the Deed of Sale itself; while in the case impugning the Writ of Possession, it would be the trial court's Order applying Article 129 of the Family Code.

We disagree. The CA failed to consider that RTC Br. 70 issued an Order dated 2 October 2003, which granted authority to Ceferino to sign the Deed of Sale on Amparo's behalf. This same Order also contained, in its dispositive portion, a directive that "(a)fter the sale of the subject property shall have been consummated, all the occupants thereof shall vacate and clear the same to enable the buyer to take complete possession and control of the property." Thus, using the first test, the same evidence – the 2 October 2003 Order of RTC Br. 70 – would defeat both Amparo's Complaint for Declaration of Nullity of the Deed of Sale and her Petition impugning the

Writ of Possession. Notably, Amparo failed to timely question RTC Br. 70's Order dated 2 October 2003.

The CA also held that, using the second test, the defenses raised in one case will not necessarily be used in the other. It reasoned that although the grant of the Petition impugning the Writ of Possession would result in the nullification of the Deed of Sale, the denial of the Petition would not bar a ruling on the Complaint for nullification of the Deed of Sale, which was based on Amparo's lack of consent thereto.

Again, we do not agree. Amparo seeks to prevent the sale and thereby maintain ownership of the conjugal dwelling, both in her Petition to nullify the Writ of Possession and in her Complaint for declaration of nullity of the Deed of Sale. In both cases, she theorized that (1) since the 3 January 2001 Decision of RTC Br. 70 merely directed the dissolution and liquidation of the conjugal partnership in accordance with Article 129 of the Family Code, its subsequent Orders directing the sale of the conjugal dwelling improperly modified its own final Decision; and (2) because she was the spouse with whom a majority of the common children chose to remain, the conjugal dwelling should be adjudicated to her in accordance with the mandate of Article 129 (9) of the Family Code.

Accordingly, using the second test, the same defense (i.e., the 2 October 2003 Order of RTC Br. 70) will defeat both the Complaint to nullify the Deed of Sale and the Petition to impugn the Writ of Possession. In fact, the subsequent Writ of Possession issued by RTC Br. 70 was the logical consequence of, and merely gave effect to, the Deed of Sale which it had previously approved. Basically, the two cases belatedly impugn the 2 October 2003 Order of RTC Br. 70 implementing its 23 May 2003 Order, which had long become final, following the earlier failed attempts of Amparo to impugn the latter Order.

As to the last requisite, a final judgment on the merits by a court that has jurisdiction over the parties and over the subject matter in the Petition to nullify the Writ of Possession would have barred subsequent judgment on the Complaint for Declaration of Nullity of the Deed of Sale based on the principle of *res judicata*.^[11]

At the time Amparo filed her Complaint for Declaration of Nullity of the Deed of Sale with RTC Br. 67, her Petition impugning the Writ of Possession was already pending with the CA. Thus, from the point of view of RTC Br. 67, the CA's final judgment on the merits of the case before it would have barred a subsequent judgment on the Complaint for Declaration of Nullity of the Deed of Sale.

When the CA eventually upheld the propriety of the Writ of Possession, it necessarily upheld the validity of the Deed of Sale, which the Writ of Possession sought to implement. On the other hand, had the CA declared null and void the Writ of Possession based on the grounds cited by Amparo, the Complaint to annul the Deed of Sale would have been barred. This is because upholding her position would necessarily include a ruling that the RTC Br. 70 Order directing the sale itself of the conjugal dwelling was improper. Such impropriety would then extend to subsequent orders merely implementing the sale of the conjugal dwelling, including RTC Br. 70's grant of authority to Ceferino to sign the Deed of Sale on behalf of Amparo.

In fine, the CA erred in reversing the dismissal by RTC Br. 67 of the Complaint for Declaration of Nullity of Deed of Sale on the ground of the pendency of the Petition impugning the Writ of Possession before another Division of the CA.

Having ruled that *litis pendentia* was properly invoked below, Amparo was necessarily also guilty of forum-shopping, as correctly ruled by RTC Br. 67. As we held in *Buan v. Lopez*,^[12] "forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other."

Nevertheless, we take time to stress a point to avoid doctrinal confusion on *litis pendentia* and *res judicata* in this

case.

Despite our pronouncement on the propriety of the dismissal of the Complaint for nullification of the Deed of Absolute Sale on the ground of *litis pendencia* by RTC Br. 67, and the finality of the dismissal of G.R. No. 171260, we clarify that *res judicata* cannot be said to apply herein, simply because we dismissed Amparo's Petition in G.R. No. 171260. While the dismissal of G.R. No. 171260 is now final, having been rendered by this Court which had jurisdiction over the subject matter and the parties thereto, it was not a judgment "on the merits" of the case.

A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections";[13] or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point." [14] In American jurisdiction, it is recognized that "(i)stances in which dismissals are not considered to be on the merits for purposes of the application of the doctrine of *res judicata* include ... dismissal based on court's procedural inability to consider a case." [15]

A reading of our Decision in G.R. No. 171260 shows that the Petition was dismissed upon a procedural inability to consider the case, based on the principle of finality of judgments. The Court's reason for denying Amparo's G.R. No. 171260 Petition seeking to nullify the Writ of Possession was that the said writ was merely a subsequent Order implementing that which was issued on 26 May 2003 by RTC Br. 70 authorizing the sale of the family home. Meanwhile, the latter Order can no longer be modified, as it has long become final.

We also take time to stress that the Complaint for Declaration of Nullity of the Deed of Sale cannot prosper, because, like the Petition to nullify the Writ of Possession, it effectively seeks the modification of an already final Order of RTC Br. 70. In view of this Court's consistent ruling that Amparo cannot be allowed to impugn the already final Order of RTC Br. 70 directing the sale of the conjugal dwelling, we deny the prayer for preliminary injunction to hold in abeyance the implementation of the Notice to Vacate.

WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated 25 October 2007 and Resolution dated 27 February 2008 of the Court of Appeals in CA-G.R. CV No. 86511 are REVERSED. The 5 May 2005 Resolution of the Regional Trial Court Branch 67, Pasig City in Civil Case No. 70269, which dismissed the Complaint for Declaration of Nullity of Deed of Sale on the ground of the *litis pendencia* and forum shopping, is REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Perez, Reyes, and Perlas-Bernabe, JJ.[*] concur.

[*] Designated as acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

[1] The dispositive portion of the Decision read:

WHEREFORE, the Court hereby grants the instant petition and declared the marriage of petitioner and respondent a nullity pursuant to Art. 36 of the Family Code.

Further, the conjugal partnership is hereby dissolved and must be liquidated in accordance with Art. 129 of the Family Code, without prejudice to the prior rights of known and unknown creditors of the conjugal partnership.

Let copies of this decision be furnished the Local Civil Registrars of Cainta, Rizal and Pasig City and the Registry of Deeds of Pasig City for record purposes.

SO ORDERED.

[2] The Supreme Court's 24 May 2004 dismissal of Amparo's petition, docketed as G.R. No. 162745, became final and executory on 23 July 2004.

[3] Rollo, pp. 93-94. The dispositive portion of the said Order reads:

In view of the previous Order of this Court dated 26 May 2003 relative to the liquidation of the conjugal partnership property that the same which consists in the property covered by TCT No. 17460 be sold and the proceeds thereof be distributed as therein indicated, the Deed of Absolute Sale attached as Annex "A" to the Omnibus Motion which is in accordance with the aforestated Order is hereby APPROVED. For the purpose of selling or conveying ownership over the property to the buyer, the herein petitioner Ceferino S. Cabreza, Jr., is hereby authorized and empowered to sign and execute the Deed of Absolute Sale for and in his own behalf and in behalf of the respondent, Amparo R. Cabreza who has failed and refused and continues to fail and refuse to comply with the aforestated Order of 26 May 2003. After the sale of the subject property shall have been consummated, all the occupants thereof shall vacate and clear the same to enable the buyer to take complete possession and control of the property. (Underscoring supplied)

[4] Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children. (Underscoring supplied)

[5] The Decision of the Supreme Court Third Division in G.R. No. 171260 was penned by Justice Diosdado Peralta and concurred in by Justices Consuelo Ynares-Santiago, Minita Chico-Nazario, Presbiterio Velasco, Jr. and Antonio Eduardo Nachura.

[6] Rollo, pp. 210 – 215.

[7] Rollo, pp. 147- 149.

[8] The CA Thirteenth Division Decision in CA-G.R. CV No. 86511 was penned by Justice Marlene Gonzales-Sison and concurred in by Justices Juan Enriquez, Jr. and Vicente Veloso.

[9] Sherwill Development Corporation v. Sitio Sto. Nino Residents Association, G.R. No. 158455, 28 June 28 2005, 461 SCRA 517.

[10] Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority and Innove Communications, Inc., G.R. No. 185159, 12 October 2009, 603 SCRA 470.

[11] Allied Banking Corporation v. Court of Appeals, G.R. No. 108089, 10 January 1994, 229 SCRA 252.

[12] G.R. No. L-75349, 13 October 1986, 145 SCRA 34.

[13] Mirpuri v. Court of Appeals, G.R. No. 114508, 19 November 1999, 318 SCRA 516.

[14] Santos v. Intermediate Appellate Court, G.R. No. L-66671, 28 October 1986, 145 SCRA 238.

[15] 46 Am Jur 2d, §607, p. 882.

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