ZENAIDA POLANCO, CARLOS DE JESUS, AVELINO DE JESUS,BABY DE JESUS, LUZ DE JESUS, AND DEMETRIO SANTOS, PETITIONERS, VS. CARMEN CRUZ, REPRESENTED BY HER ATTORNEY-IN-FACT, VIRGILIO ...

G.R. No. 182426. February 13, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari[1] assails the August 28, 2007 Decision[2] of the Court of Appeals in CA-G.R. CV No. 75079, setting aside the Order[3] of Branch 17 of the Regional Trial Court of Malolos in Civil Case No. 542-M-2000, which dismissed respondent's Complaint[4] for failure to prosecute. Also assailed is the March 28, 2008 Resolution[5] denying petitioners' Motion for Reconsideration.[6]

The facts are as follows:

Respondent Carmen Cruz, through her attorney-in-fact, Virgilio Cruz, filed a complaint for damages[7] against petitioners for allegedly destroying her palay crops. While admitting that petitioners own the agricultural land she tilled, respondent claimed she was a lawful tenant thereof and had been in actual possession when petitioners maliciously filled so with soil and palay husk on July 1 and 2, 2000. Respondent prayed that petitioners be held liable for actual damages, moral damages, exemplary damages, litigation expenses and attorney's fees, and costs of the suit.

Petitioners filed a Motion to Dismiss,[8] which was denied by the trial court in an Order[9] dated December 4, 2000. It held that it has jurisdiction over the case because the allegations in the Complaint made a claim for damages, and not an agrarian dispute which should be referred to the Department of Agrarian Reform Adjudication Board (DARAB); and that the Complaint was properly filed because the Certification of Non-forum Shopping was signed by respondent's attorney-in-fact.

Petitioners simultaneously filed an Answer[10] to the complaint and a Motion for Reconsideration[11] of the December 4, 2000 Order. However, the court a quo denied the motion for lack of merit in an Order[12] dated September 10, 2001. On January 9, 2002, the trial court issued an Order[13] dismissing the case due to respondent's failure to prosecute.

With the denial[14] of her Motion for Reconsideration,[15] respondent interposed an appeal to the Court of Appeals which rendered the assailed Decision dated August 28, 2007, the dispositive portion of which states:

> WHEREFORE, the appeal is hereby GRANTED. Accordingly, the Order, dated January 9, 2002, of the RTC [Branch 17, Malolos] is hereby REVERSED and SET ASIDE. Plaintiff-appellant's Complaint is hereby REINSTATED and the case is hereby REMANDED to the RTC [Branch 17, Malolos] for further proceedings.
>
> SO ORDERED.[16]

The Court of Appeals ruled that the trial court erred in finding that the parties failed to take necessary action regarding the case because the records plainly show that petitioners filed an Answer to the complaint, while respondent filed an Opposition to the Motion for Reconsideration with Manifestation Re: Answer of Defendants.[17]

With regard to the order of the trial court dismissing the complaint on the ground of failure to prosecute, the appellate court held that the previous acts of respondent do not manifest lack of interest to prosecute the case; that since filing the Complaint, respondent filed an Opposition to petitioners' Motion to Dismiss, an Answer to petitioners' counterclaim, and a Comment to petitioners' Motion for Reconsideration; that respondent did not ignore petitioners' Motion to Dismiss nor did she repeatedly fail to appear before the court; that no substantial prejudice would be caused to petitioners and that strict application of the rule on dismissal is unjustified considering the absence of pattern or scheme to delay the disposition of the case on the part of respondent; and that justice would be better served if the case is remanded to the trial court for further proceedings and final disposition.

On March 28, 2008, the Court of Appeals denied petitioners' Motion for Reconsideration; hence, this petition based on the following ground:

> WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IN C.A.-G.R. CV No. 75079, NULLIFYING AND/OR REVERSING AND/OR SETTING ASIDE THE ORDERS DATED JANUARY 9, 2002 AND MAY 8, 2002 ISSUED BY THE RTC-BULACAN IN CIVIL CASE No. 542-M-00, IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.

Petitioners allege that respondent failed to comply with the mandate of the 1997 Rules of Civil Procedure to promptly move for the setting of the case for pre-trial; that "heavy pressures of work" does not justify the failure to move for the setting of the case for pre-trial; that the allegations in the Complaint which pertain to respondent's status as a tenant of Elena C. De Jesus amount to forum shopping that would extremely prejudice them. Petitioners thus pray for the nullification of the Decision and Resolution of the Court of Appeals and the affirmation of the dismissal of the Complaint by the trial court.

The petition lacks merit.

The Court of Appeals correctly noted that petitioners raised the matter of respondent's alleged forum shopping for the first time only in their Motion for Reconsideration. Issues not previously ventilated cannot be raised for the first time on appeal,[18] much less when first raised in the motion for reconsideration of a decision of the appellate court.

At any rate, this Court does not find respondent's allegations in her complaint in Civil Case No. 542-M-00 to be constitutive of the elements of forum-shopping. Respondent merely described herself as a tenant of petitioners and mentioned that there was an unlawful detainer case[19] involving the parcel of land which is also involved in the instant civil case for damages.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or certiorari. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Still another test of forum-shopping is when the elements of litis pendencia are present or where a final judgment in one case will amount to res judicata in another – whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions), (b) rights or causes of action, and (c) reliefs sought.[20]

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Although there is an identity of some of the parties in the instant case for damages and the unlawful detainer case, there is, however, no identity of reliefs prayed for. The former is for recovery of damages allegedly caused by petitioners' acts on respondent's palay crops; while the latter case involved possessory and tenancy rights of respondent. As such, respondent did not violate the rule on forum-shopping.

Section 1, Rule 18 of the 1997 Rules of Civil Procedure imposes upon the plaintiff the duty to promptly move ex parte to have the case set for pre-trial after the last pleading has been served and filed. Moreover, Section 3, Rule 17[21] provides that failure on the part of the plaintiff to comply with said duty without any justifiable cause may result to the dismissal of the complaint for failure to prosecute his action for an unreasonable length of time or failure to comply with the rules of procedure.

It must be stressed that even if the plaintiff fails to promptly move for pre-trial without any justifiable cause for such delay, the extreme sanction of dismissal of the complaint might not be warranted if no substantial prejudice would be caused to the defendant, and there are special and compelling reasons which would make the strict application of the rule clearly unjustified.[22]

In the instant case, the Court of Appeals correctly held that the dismissal of respondent's complaint is too severe a sanction for her failure to file a motion to set the case for pre-trial. It must be pointed out that respondent prosecuted her action with utmost diligence and with reasonable dispatch since filing the complaint – she filed an opposition to petitioners' motion to dismiss the complaint; a comment to petitioners' motion for reconsideration of the December 4, 2000 Order of the trial court; and an Answer to Counterclaim of petitioners. When the trial court issued an order dismissing the case, respondent filed without delay a motion for reconsideration; and upon its denial, she immediately filed a Notice of Appeal.[23] Moreover, contrary to petitioners' claim that respondent was silent for one year since she filed her Answer to Counterclaim until the trial court's dismissal order,[24] records show that between said period, both parties and the trial court were threshing out petitioners' motion for reconsideration of the December 4, 2000 Order.

While "heavy pressures of work" was not considered a persuasive reason to justify the failure to set the case for pre-trial in Olave v. Mistas,[25] however, unlike the respondents in the said case, herein respondent never failed to comply with the Rules of Court or any order of the trial court at any other time. Failing to file a motion to set the case for pre-trial was her first and only technical lapse during the entire proceedings. Neither has she manifested an evident pattern or a scheme to delay the disposition of the case nor a wanton failure to observe the mandatory requirement of the rules. Accordingly, the ends of justice and fairness would best be served if the parties are given the full opportunity to litigate their claims and the real issues involved in the case are threshed out in a full-blown trial. Besides, petitioners would not be prejudiced should the case proceed as they are not stripped of any affirmative defenses nor deprived of due process of law.

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application.[26] Indeed, on several occasions, the Court relaxed the rigid application of the rules of procedure to afford the parties opportunity to fully ventilate the merits of their cases. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.[27]

Finally, A.M. No. 03-1-09-SC or the new Guidelines To Be Observed By Trial Court Judges And Clerks Of Court In The Conduct Of Pre-Trial And Use Of Deposition-Discovery Measures, which took effect on August 16, 2004, aims to abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-trial guidelines laid down in Administrative Circular No. 3-99[28] dated January 15,

1999. A.M. No. 03-1-09-SC states that: "Within five (5) days from date of filing of the reply,[29] the plaintiff must promptly move ex parte that the case be set for pre-trial conference.[30] If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial." As such, the clerk of court of Branch 17 of the Regional Trial Court of Malolos should issue a notice of pre-trial to the parties and set the case for pre-trial.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The August 28, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 75079, setting aside the Order of Branch 17 of the Regional Trial Court of Malolos dismissing Civil Case No. 542-M-2000 for respondent's failure to prosecute, and its March 28, 2008 Resolution denying petitioners' Motion for Reconsideration are AFFIRMED. The clerk of court of Branch 17 of the Regional Trial Court of Malolos is DIRECTED to issue a notice of pre-trial to the parties.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Peralta, JJ., concur.

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[1] Rollo, pp. 3-10.

[2] Id. at 15-23; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Monina Arevalo-Zenarosa.

[3] Id. at 82.

[4] Id. at 34-37.

[5] Id. at 31-33.

[6] Id. at 24-29.

[7] Carmen Cruz, represented by her attorney-in fact, Virgilio Cruz, plaintiff v. Carlos De Jesus, Avelino De Jesus, Carlos De Jesus, Alias Supit De Jesus, Baby De Jesus, Luz De Jesus, Zanaida Polanco, and Demetrio Santos, defendants, Civil Case No. 542-M-00.

[8] Rollo, pp. 52-54.

[9] Id. at 62-63.

[10] Id. at 71-74.

[11] Id. at 64-69.

[12] Id. at 80-81.

[13] Id. at 82.

[14] Id. at 89-90.

[15] Id. at 83-84.

[16] Id. at 22-23.

[17] Id. at 85-87.

[18] Rasdas v.Estenor, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 551.

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[19] Estate of Guillermo de Jesus and Elena C. De Jesus v. Carmen Cruz, and all persons claiming right under her, SP Civil Action No. 65 for Unlawful Detainer with TRO/Injunction in Municipal Trial Court of Calumpit, Bulacan and Civil Case No. 1013-M-99 for Unlawful Detainer with TRO/Injunction in Regional Trial Court of Malolos, Branch 14.

[20] National Electrification Administration (NEA) v. Buenaventura, G.R. No. 132453, February 14, 2008, 545 SCRA 277, 288-289.

[21] RULES OF COURT, Rule 17, 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.

[22] Olave v. Mistas, G.R. No. 155193, November 26, 2004, 444 SCRA 479, 495.

[23] Records, pp. 99-100.

[24] Rollo, pp. 138, 140, 142.

[25] Supra note 22.

[26] Republic of the Philippines v. Oleta, G.R. No. 156606, August 17, 2007, 530 SCRA 534, 542.

[27] Crystal Shipping, Inc. v. Natividad, G.R. No. 154798, October 20, 2005, 473 SCRA 559, 565-566.

[28] Strict Observance of Session Hours of Trial Courts and Effective Management of Cases to Ensure their Speedy Disposition.

[29] Administrative Circular No. 3-99 dated 15 January 1999.

[30] 1997 RULES OF CIVIL PROCEDURE, Rule 18, Sec. 1.

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