

JOSEPHINE MARMO, NESTOR ESGUERRA, DANILO DEL PILAR AND MARISA DEL PILAR, PETITIONERS, VS. MOISES O. ANACAY, RESPONDENT.*G.R. No. 182585. November 27, 2009*

Ponente: BRION, J.

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Before us is the Petition for Review on Certiorari,[1] filed by the spouses Josephine Marmo and Nestor Esguerra and the spouses Danilo del Pilar and Marisa del Pilar (collectively, the petitioners), to reverse and set aside the Decision[2] dated December 28, 2007 and the Resolution[3] dated April 11, 2008 of the Former Special Eleventh Division of the Court of Appeals (CA) in CA-G.R. SP No. 94673. The assailed CA Decision dismissed the petitioners' petition for certiorari challenging the Orders dated March 14, 2006[4] and May 8, 2006[5] of the Regional Trial Court (RTC), Branch 90, Dasmariñas, Cavite in Civil Case No. 2919-03, while the assailed CA Resolution denied the petitioners' motion for reconsideration.

FACTUAL BACKGROUND

The facts of the case, as gathered from the parties' pleadings, are briefly summarized below:

On September 16, 2003, respondent Moises O. Anacay filed a case for Annulment of Sale, Recovery of Title with Damages against the petitioners[6] and the Register of Deeds of the Province of Cavite, docketed as Civil Case No. 2919-03.[7] The complaint states, among others, that: the respondent is the bona-fide co-owner, together with his wife, Gloria P. Anacay (now deceased), of a 50-square meter parcel of land and the house built thereon, located at Blk. 54, Lot 9, Regency Homes, Brgy. Malinta, Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) No. T-815595 of the Register of Deeds of Cavite; they authorized petitioner Josephine to sell the subject property; petitioner Josephine sold the subject property to petitioner Danilo for P520,000.00, payable in monthly installments of P8,667.00 from May 2001 to June 2006; petitioner Danilo defaulted in his installment payments from December 2002 onwards; the respondent subsequently discovered that TCT No. 815595 had been cancelled and TCT No. T-972424 was issued in petitioner Josephine's name by virtue of a falsified Deed of Absolute Sale dated September 20, 2001; petitioner Josephine subsequently transferred her title to petitioner Danilo; TCT No. T-972424 was cancelled and TCT No. T-991035 was issued in petitioner Danilo's name. The respondent sought the annulment of the Deed of Absolute Sale dated September 20, 2001 and the cancellation of TCT No. T-991035; in the alternative, he demanded petitioner Danilo's payment of the balance of P347,000.00 with interest from December 2002, and the payment of moral damages, attorney's fees, and cost of suit.

In her Answer, petitioner Josephine averred, among others, that the respondent's children, as co-owners of the subject property, should have been included as plaintiffs because they are indispensable parties.[8] Petitioner Danilo echoed petitioner Josephine's submission in his Answer.[9]

Following the pre-trial conference, the petitioners filed a Motion to Dismiss the case for the respondent's failure to

include his children as indispensable parties.[10]

The respondent filed an Opposition, arguing that his children are not indispensable parties because the issue in the case can be resolved without their participation in the proceedings.[11]

THE RTC RULING

The RTC found the respondent's argument to be well-taken and thus denied the petitioners' motion to dismiss in an Order dated March 14, 2006.[12] It also noted that the petitioners' motion was simply filed to delay the proceedings.

After the denial of their Motion for Reconsideration,[13] the petitioners elevated their case to the CA through a Petition for Certiorari under Rule 65 of the Rules of Court.[14] They charged the RTC with grave abuse of discretion amounting to lack of jurisdiction for not dismissing the case after the respondent failed to include indispensable parties.

THE CA RULING

The CA dismissed the petition[15] in a Decision promulgated on December 28, 2007. It found that the RTC did not commit any grave abuse of discretion in denying the petitioners' motion to dismiss, noting that the respondent's children are not indispensable parties.

The petitioners moved[16] but failed[17] to secure a reconsideration of the CA Decision; hence, the present petition.

Following the submission of the respondent's Comment[18] and the petitioners' Reply,[19] we gave due course to the petition and required the parties to submit their respective memoranda.[20] Both parties complied.[21]

Meanwhile, on April 24, 2009, the petitioners filed with the RTC a Motion to Suspend Proceedings due to the pendency of the present petition. The RTC denied the motion to suspend as well as the motion for reconsideration that followed. The petitioners responded to the denial by filing with us a petition for the issuance of a temporary restraining order (TRO) to enjoin the RTC from proceeding with the hearing of the case pending the resolution of the present petition.

THE PETITION and THE PARTIES' SUBMISSIONS

The petitioners submit that the respondent's children, who succeeded their deceased mother as co-owners of the property, are indispensable parties because a full determination of the case cannot be made without their presence, relying on *Arcelona v. Court of Appeals*,[22] *Orbeta v. Sendiong*,[23] and *Galicía v. Manlriquez Vda. de Mindo*. [24] They argue that the non-joinder of indispensable parties is a fatal jurisdictional defect.

The respondent, on the other hand, counters that the respondent's children are not indispensable parties because the issue involved in the RTC - whether the signatures of the respondent and his wife in the Deed of Absolute Sale dated September 20, 2001 were falsified - can be resolved without the participation of the respondent's children.

THE ISSUE

The core issue is whether the respondent's children are indispensable parties in Civil Case No. 2919-03. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly ruled that the RTC did not

commit any grave abuse of discretion in ruling that the respondent's children are not indispensable parties.

OUR RULING

We see no merit in the petition.

General Rule: The denial of a motion to dismiss is an interlocutory order which is not the proper subject of an appeal or a petition for certiorari.

At the outset, we call attention to Section 1 of Rule 41[25] of the Revised Rules of Court governing appeals from the RTC to the CA. This Section provides that an appeal may be taken only from a judgment or final order that completely disposes of the case, or of a matter therein when declared by the Rules to be appealable. It explicitly states as well that no appeal may be taken from an interlocutory order.

In law, the word "interlocutory" refers to intervening developments between the commencement of a suit and its complete termination; hence, it is a development that does not end the whole controversy.[26] An "interlocutory order" merely rules on an incidental issue and does not terminate or finally dispose of the case; it leaves something to be done before the case is finally decided on the merits.[27]

An Order denying a Motion to Dismiss is interlocutory because it does not finally dispose of the case, and, in effect, directs the case to proceed until final adjudication by the court. Only when the court issues an order outside or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief, will certiorari be considered an appropriate remedy to assail an interlocutory order.[28]

In the present case, since the petitioners did not wait for the final resolution on the merits of Civil Case No. 2919-03 from which an appeal could be taken, but opted to immediately assail the RTC Orders dated March 14, 2006 and May 8, 2006 through a petition for certiorari before the CA, the issue for us to address is whether the RTC, in issuing its orders, gravely abused its discretion or otherwise acted outside or in excess of its jurisdiction.

The RTC did not commit grave abuse of discretion in denying the petitioners' Motion to Dismiss; the respondent's co-owners are not indispensable parties.

The RTC grounded its Order dated March 14, 2006 denying the petitioners' motion to dismiss on the finding that the respondent's children, as co-owners of the subject property, are not indispensable parties to the resolution of the case.

We agree with the RTC.

Section 7, Rule 3 of the Revised Rules of Court[29] defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants. Jurisprudence further holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without

affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[30]

When the controversy involves a property held in common, Article 487 of the Civil Code explicitly provides that "any one of the co-owners may bring an action in ejectment."

We have explained in *Vencilao v. Camarenta*[31] and in *Sering v. Plazo*[32] that the term "action in ejectment" includes a suit for forcible entry (detentacion) or unlawful detainer (desahucio).[33] We also noted in *Sering* that the term "action in ejectment" includes "also, an accion publiciana (recovery of possession) or accion reivindicatoria[34] (recovery of ownership)." Most recently in *Estreller v. Ysmael*,[35] we applied Article 487 to an accion publiciana case; in *Plasabas v. Court of Appeals*[36] we categorically stated that Article 487 applies to reivindicatory actions.

We upheld in several cases the right of a co-owner to file a suit without impleading other co-owners, pursuant to Article 487 of the Civil Code. We made this ruling in *Vencilao*, where the amended complaint for "forcible entry and detainer" specified that the plaintiff is one of the heirs who co-owns the disputed properties. In *Sering*, and *Resuena v. Court of Appeals*,[37] the co-owners who filed the ejectment case did not represent themselves as the exclusive owners of the property. In *Celino v. Heirs of Alejo and Teresa Santiago*,[38] the complaint for quieting of title was brought in behalf of the co-owners precisely to recover lots owned in common.[39] In *Plasabas*, the plaintiffs alleged in their complaint for recovery of title to property (accion reivindicatoria) that they are the sole owners of the property in litigation, but acknowledged during the trial that the property is co-owned with other parties, and the plaintiffs have been authorized by the co-owners to pursue the case on the latter's behalf.

These cases should be distinguished from *Baloloy v. Hular*[40] and *Adlawan v. Adlawan*[41] where the actions for quieting of title and unlawful detainer, respectively, were brought for the benefit of the plaintiff alone who claimed to be the sole owner. We held that the action will not prosper unless the plaintiff impleaded the other co-owners who are indispensable parties. In these cases, the absence of an indispensable party rendered all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

We read these cases to collectively mean that where the suit is brought by a co-owner, without repudiating the co-ownership, then the suit is presumed to be filed for the benefit of the other co-owners and may proceed without impleading the other co-owners. However, where the co-owner repudiates the co-ownership by claiming sole ownership of the property or where the suit is brought against a co-owner, his co-owners are indispensable parties and must be impleaded as party-defendants, as the suit affects the rights and interests of these other co-owners.

In the present case, the respondent, as the plaintiff in the court below, never disputed the existence of a co-ownership nor claimed to be the sole or exclusive owner of the litigated lot. In fact, he recognized that he is a "bona-fide co-owner" of the questioned property, along with his deceased wife. Moreover and more importantly, the respondent's claim in his complaint in Civil Case No. 2919-03 is personal to him and his wife, i.e., that his and his wife's signatures in the Deed of Absolute Sale in favor of petitioner Josephine were falsified. The issue therefore is falsification, an issue which does not require the participation of the respondent's co-owners at the trial; it can be determined without their presence because they are not parties to the document; their signatures do not appear therein. Their rights and interests as co-owners are adequately protected by their co-owner and father, respondent Moises O. Anacay, since the complaint was made precisely to recover ownership and possession of the properties owned in common, and, as such, will redound to the benefit of all the co-owners.[42]

In sum, respondent's children, as co-owners of the subject property, are not indispensable parties to the resolution of the case. We held in *Carandang v. Heirs of De Guzman*[43] that in cases like this, the co-owners are not even necessary parties, for a complete relief can be accorded in the suit even without their participation, since the suit is presumed to be filed for the benefit of all.[44] Thus, the respondent's children need not be impleaded as party-plaintiffs in Civil Case No. 2919-03.

We cannot subscribe to the petitioners' reliance on our rulings in *Arcelona v. Court of Appeals*,[45] *Orbeta v. Sendiong*[46] and *Galicía v. Manlquez Vda. de Mindo*,[47] for these cases find no application to the present case. In these cited cases, the suits were either filed against a co-owner without impleading the other co-owners, or filed by a party claiming sole ownership of a property that would affect the interests of third parties.

Arcelona involved an action for security of tenure filed by a tenant without impleading all the co-owners of a fishpond as party-defendants. We held that a tenant, in an action to establish his status as such, must implead all the pro-indiviso co-owners as party-defendants since a tenant who fails to implead all the co-owners as party-defendants cannot establish with finality his tenancy over the entire co-owned land. *Orbeta*, on the other hand, involved an action for recovery of possession, quieting of title and damages wherein the plaintiffs prayed that they be declared "absolute co-owners" of the disputed property, but we found that there were third parties whose rights will be affected by the ruling and who should thus be impleaded as indispensable parties. In *Galicía*, we noted that the complaint for recovery of possession and ownership and annulment of title alleged that the plaintiffs' predecessor-in-interest was deprived of possession and ownership by a third party, but the complaint failed to implead all the heirs of that third party, who were considered indispensable parties.

In light of these conclusions, no need arises to act on petitioners' prayer for a TRO to suspend the proceedings in the RTC and we find no reason to grant the present petition.

WHEREFORE, premises considered, we hereby DENY the petition for its failure to show any reversible error in the assailed Decision dated December 28, 2007 and Resolution dated April 11, 2008 of the Court of Appeals in CA-G.R. SP No. 94673, both of which we hereby AFFIRM. Costs against the petitioners.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, Brion, Del Castillo, and Abad, JJ., concur.

* Known as "Josephine Marmo-Esguerra" in other parts of the rollo.

[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Japar B. Dimaampao and Ramon R. Garcia, concurring; rollo, pp. 123-131.

[3] Id. at 146.

[4] Id. at 82.

[5] Id. at 83-88.

[6] Excluding petitioner Marisa del Pilar.

[7] Rollo, pp. 27-34.

[8] Rollo, pp. 35-40.

[9] Id. at 41-45.

[10] Id. at 77-79.

[11] Id. 80-81.

[12] Id. at 82.

[13] Id. at 83-88.

[14] Id. at 89-104.

[15] Supra note 2.

[16] Rollo, pp. 132-140.

[17] Supra note 3.

[18] Rollo, pp. 153-156.

[19] Id. at 159.

[20] Id. at 163-164.

[21] Id. at 165-180, 186-192.

[22] 345 Phil. 250 (1997).

[23] G.R. No. 155236, July 8, 2005, 463 SCRA 180.

[24] G.R. No. 155785, April 13, 2007, 521 SCRA 85.

[25] SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (f) An order of execution;
- (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, crossclaims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (h) An order dismissing an action without prejudice;

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphasis provided.)

[26] See *Ex-Mayor Tambaoan v. Court of Appeals*, 417 Phil. 683, 695 (2001); and *Halili v. Court of Industrial Relations, et al.*, 130 Phil. 806, 811 (1968).

[27] *Repol v. Commission on Elections*, G.R. No. 161418, April 28, 2004, 428 SCRA 321, 327-328.

[28] See *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 435 (2005); *Philippine American Life and General Insurance Company v. Valencia-Bagalasca*, 435 Phil. 104, 111 (2002); and *J.L. Bernardo Construction v. Court of Appeals*, 381 Phil. 25 (2000).

[29] SECTION 7. Compulsory joinder of indispensable parties. - Parties-in-interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[30] See *Moldes v. Villanueva*, G.R. No. 161955, August 31, 2005, 468 SCRA 697, 707-708; *Servicewide Specialists, Inc. v. Court of Appeals*, 376 Phil. 602, 612 (1999).

[31] 140 Phil. 99 (1969).

[32] 298 Phil. 315 (1988).

[33] See also *De Guia v. Court of Appeals*, 459 Phil. 447 (2003).

[34] Other decisions spell it as "accion reivindicatoria," see *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc.*, G.R. No. 170750, April 7, 2009; *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, April 7, 2009; *Amoroso v. Alegre, Jr.*, G.R. No. 142766, June 15, 2007, 524 SCRA 641; *Valdez, Jr. v. Court of Appeals*, G.R. No. 132424, May 4, 2006, 489 SCRA 369; *Heirs of Demetrio Melchor v. Melchor*, 461 Phil. 437 (2003); and *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83 (1998).

[35] G.R. No. 170264, March 13, 2009.

[36] G.R. No. 166519, March 31, 2009.

[37] G.R. No. 128338, March 28, 2005, 454 SCRA 42.

[38] 479 Phil. 617 (2004).

[39] *Id.* at 624.

[40] 481 Phil. 398 (2004).

[41] G.R. No. 161916, January 20, 2006, 479 SCRA 275.

[42] See also *Wee v. De Castro*, G.R. No. 176405, August 20, 2008, 562 SCRA 695, 711; and *Santos v. Heirs of Dominga Ilustre*, G.R. No. 151016, August 6, 2008, 561 SCRA 120, 132.

[43] G.R. No. 160347, November 29, 2006, 508 SCRA 469, 487-488.

[44] *Id.* at 487-488.

[45] *Supra* note 23.

[46] *Supra* note 24.

[47] *Supra* note 25.

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