

ELSA D. MEDADO, PETITIONER, VS. HEIRS OF THE LATE ANTONIO CONSING, AS REPRESENTED BY DR. SOLEDAD CONSING, RESPONDENTS.*G.R. No. 186720. February 08, 2012*

Ponente: REYES, J.

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This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the following issuances of the Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 02660, entitled “Heirs of the Late Antonio Consing as represented by Dra. Soledad Consing v. Hon. Renato D. Muñoz, Presiding Executive Judge, Regional Trial Court, Branch 60, Cadiz City, Spouses Meritus Rey Medado, the Sheriff IV, Balbino B. Germinal, Regional Trial Court, Branch 60, Cadiz City and Land Bank of the Philippines”:

(1) the Decision[1] dated September 26, 2008, reversing and setting aside the order[2] of the Regional Trial Court (RTC), Branch 60, Cadiz City, in Civil Case No. 797-C, an action for injunction; and

(2) the Resolution[3] dated January 21, 2009, denying the motion for reconsideration of the decision dated September 26, 2008.

The Factual Antecedents

Sometime in 1996, petitioner Meritus Rey Medado and Elsa Medado (Spouses Medado) and the estate of the late Antonio Consing (Estate of Consing), as represented by Soledad Consing (Soledad), executed Deeds of Sale with Assumption of Mortgage for the former's acquisition from the latter of the property in Cadiz City identified as Hacienda Sol. Records indicate that the sale included the parcels of land covered by OCT No. P-498, TCT No. T-31275, TCT No. T-31276 and TCT No. T-31277. As part of the deal, Spouses Medado undertook to assume the estate's loan with Philippine National Bank (PNB).

Subsequent to the sale, however, the Estate of Consing offered the subject lots to the government via the Department of Agrarian Reform's Voluntary Offer to Sell (VOS) program. On November 22, 2000, the Estate of Consing also instituted with the RTC, Branch 44 of Bacolod City an action for rescission and damages, docketed as Civil Case No. 00-11320 against Spouses Medado, PNB and the Register of Deeds of Cadiz City, due to the alleged failure of the spouses to meet the conditions in their agreement.

In the meantime that Civil Case No. 00-11320 for rescission was pending, Land Bank of the Philippines (LBP) issued in favor of the Estate of Consing a certificate of deposit of cash and agrarian reform bonds, as compensation for the lots covered by the VOS. Spouses Medado feared that LBP would release the full proceeds thereof to the Estate of Consing. They claimed to be the ones entitled to the proceeds considering that they had bought the properties through the Deeds of Sale with Assumption of Mortgage which they and the Estate of Consing had earlier executed.

The foregoing prompted Spouses Medado to institute Civil Case No. 797-C, an action for injunction with prayer for the issuance of a temporary restraining order, with the RTC, Branch 60 of Cadiz City. They asked that the following be issued by the trial court: (a) writ of prohibitory injunction to restrain LBP from releasing the remaining amount of the VOS proceeds of the lots offered by the Estate of Consing, and restraining the Estate of Consing from receiving these proceeds; and (b) writ of mandatory injunction to compel LBP to release the remaining amount of the VOS to the spouses.

On March 9, 2007, the RTC of Cadiz City issued an Order^[4] granting Spouses Medado's application for the issuance of writs of preliminary prohibitory and mandatory injunction. The order's dispositive portion reads:

WHEREFORE, finding the application for the issuance of a writ of preliminary prohibitory injunction and preliminary mandatory injunction of the plaintiffs to be MERITORIOUS, the same is hereby GRANTED.

Let therefore a Writ of Preliminary Prohibitory and Mandatory Injunction be issued against defendant Land Bank, its agents, lawyers and all other persons acting in its behalf to cease and desist from releasing the balance of the VOS Proceeds to defendant Heirs of the Late Antonio Consing as represented by Dra. Soledad Consing and restraining said defendant Consing, her agents, lawyers, successors-in-interest, and all other persons acting in its behalf from receiving the same and to maintain the STATUS QUO ANTE BELLUM while defendant Land Bank of the Philippines is hereby ordered to release and pay the whole of the remaining balance of the VOS Proceeds held by the said defendant to the plaintiffs after the posting of a bond by the plaintiffs in the amount of FIVE MILLION PESOS (P5,000,000.00) executed in favor of the defendants conditioned upon the payment to the said defendants by the plaintiffs [of] all damages which the former may sustain by reason of the issuance of the writ of preliminary prohibitory and mandatory injunction in case this Court should finally decide that the plaintiffs are not entitled thereto.

Furnish copies of this Order to all counsels and parties.

SO ORDERED.^[5]

Feeling aggrieved, the heirs of the late Antonio Consing (Consing) questioned the RTC's order via a petition for certiorari filed with the CA, against Hon. Renato D. Muñoz, Presiding Executive Judge, RTC, Branch 60 of Cadiz City, Spouses Medado, Sheriff IV Balbino B. Germinal of RTC, Branch 60 of Cadiz City and LBP. They sought, among other reliefs, the dismissal of the complaint for injunction for violation of the rules on *litis pendentia* and forum shopping. On the matter of the absence of a motion for reconsideration of the trial court's order before resorting to a petition for certiorari, the heirs explained that the implementation of the questioned writs through LBP's release of the VOS proceeds' balance to the sheriff on March 29, 2007, notwithstanding: (a) the pendency of motions for reconsideration and dissolution of the writs filed by the heirs, and (b) the fact that the writs were immediately implemented even if a hearing on the motions was already scheduled for March 30, 2007, prompted the heirs' withdrawal of their motions for being already moot and academic. The heirs argued that their case was within the exceptions to the general rule that a petition under Rule 65 will not lie unless a motion for reconsideration is first filed before the lower court.

In their comment on the petition, Spouses Medado questioned, among other matters, the authority of Soledad to sign the petition's certification of non-forum shopping on behalf of her co-petitioners.

The Ruling of the CA

On September 26, 2008, the CA rendered the assailed decision,^[6] the dispositive portion of which reads:

WHEREFORE, the petition being impressed with merit is GRANTED. The assailed Order dated March 9, 2007 is NULLIFIED and SET ASIDE and the complaint in Civil Case No. 797-C DISMISSED. Private respondents are directed to return P3,743,825.88 to Land Bank of the Philippines to await a final ruling in Civil

Case No. 00-1320.

No costs.

SO ORDERED.[7]

The CA ruled that the RTC gravely abused its discretion in taking cognizance of Civil Case No. 797-C for injunction during the pendency of Civil Case No. 00-11320 for rescission and damages as this violates the rule against forum shopping.

Spouses Medado's motion for reconsideration of the decision of September 26, 2008 was denied by the CA via its Resolution[8] dated January 21, 2009. Hence, this petition.

The Present Petition

This petition was instituted by petitioner Elsa Medado without naming her husband as co-petitioner, due to their alleged separation de facto.[9] It presents the following issues for this Court's determination:

- I. Whether or not the CA correctly admitted the petition for certiorari filed before it, notwithstanding alleged deficiencies in its verification and certification against forum shopping;
- II. Whether or not the CA correctly admitted the petition for certiorari filed before it even if no motion for reconsideration of the RTC's Order dated March 9, 2007 was filed with the lower court; and
- III. Whether or not the CA correctly held that the rule against forum shopping was violated by the filing of the complaint for injunction during the pendency of the action for rescission and damages.

In their comment on the petition, the respondents also raise as an issue the failure of the petitioner to join her husband as a party to the petition, considering that the action affects conjugal property.

This Court's Ruling

After due study, this Court finds the petition bereft of merit.

The requirements for verification and certification against forum shopping in the CA petition were substantially complied with, following settled jurisprudence.

Before us, the petitioner contended that the consolidated verification and certification against forum shopping of the petition filed with the CA was defective: first, for being signed only by Soledad, instead of by all the petitioners, and second, its jurat cites a mere community tax certificate of Soledad, instead of a government-issued identification card required under the 2004 Rules on Notarial Practice. The second ground was never raised by herein petitioner in her comment on the CA petition, thus, it cannot be validly raised by the petitioner at this stage.

As regards the first ground, records show that Soledad signed the verification and certification against forum shopping on behalf of her co-petitioners by virtue of a Special Power of Attorney[10] (SPA) attached to the petition filed with the CA. The SPA, signed by her co-heirs Ma. Josefa Consing Saguitguit, Ma. Carmela Consing Lopez, Ma. Lourdes Consing Gonzales and Mary Rose Consing Tuason, provides that their attorney-in-fact Soledad is authorized:

To protect, sue, prosecute, defend and adopt whatever action necessary and proper relative and with respect to our right, interest and participation over said properties, particularly those described in previous titles under TCT No. T-498, TCT No. T-31275, TCT No. T-31276 and TCT No. T-31277 of the [R]egister of Deeds, Cadiz City, covering a total area of 73.6814 square meters, and declared in the name of said Antonio Consing and located in Brgy. Magsaysay, Cadiz City, Negros Occidental, the same parcels of land are the subject of

judicial litigation before the [R]egional Trial [Court], Branch 44, Bacolod City, docketed as Civil [C]ase No. 11320, entitled “Soledad T. Consing, for herself and as Administratrix of the estate of Antonio Consing, plaintiffs, versus, Spouses Meritus Rey and Elsa Medado, et.al., defendants,” and Regional Trial Court, Branch 60, Cadiz City and docketed as Civil Case No. 797-C, entitled, [“]Spouse[s] Meritus Rey Medado and Elsa Medado, plaintiffs, versus, Land Bank of the Philippines and heirs of the Late Antonio Consing as represented by Dra. Soledad Consing, defendants”; pending in said court and which cases may at anytime be elevated to the Court of Appeals and/or Supreme Court as the circumstances so warrant;[11]

As may be gleaned from the foregoing, the authority of Soledad includes the filing of an appeal before the CA, including the execution of a verification and certification against forum shopping therefor, being acts necessary “to protect, sue, prosecute, defend and adopt whatever action necessary and proper” in relation to their rights over the subject properties.

In addition, the allegations and contentions embodied in the CA petition do not deviate from the claims already made by the heirs in Civil Case Nos. 00-11320 and 797-C, both specifically mentioned in the SPA. We emphasize that the verification requirement is simply intended to secure an assurance that the allegations in the pleading are true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[12] We rule that there was no deficiency in the petition's verification and certification against forum shopping filed with the CA.

In any case, we reiterate that where the petitioners are immediate relatives, who share a common interest in the property subject of the action, the fact that only one of the petitioners executed the verification or certification of forum shopping will not deter the court from proceeding with the action. In *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*,[13] we held:

Even if only petitioner Domingo Hernandez, Jr. executed the Verification/Certification against forum-shopping, this will not deter us from proceeding with the judicial determination of the issues in this petition. As we ratiocinated in *Heirs of Olarte v. Office of the President*:

The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.

In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, it was held that the signature of only one of the petitioners in the certification against forum shopping substantially complied with [the] rules because all the petitioners share a common interest and invoke a common cause of action or defense.

The same leniency was applied by the Court in *Cavile v. Heirs of Cavile*, because the lone petitioner who executed the certification of non-forum shopping was a relative and co-owner of the other petitioners with whom he shares a common interest. x x x

x x x

Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis,

therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.[14] (citations omitted)

Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.[15] It was based on this principle that this Court had also allowed herein petitioner, via our Resolution[16] dated April 22, 2009, a chance to submit a verification that complied with Section 4, Rule 7 of the Rules of Court, as amended, instead of us dismissing the petition outright.

There are recognized exceptions permitting resort to a special civil action of certiorari even without first filing a motion for reconsideration.

On the second issue, the CA did not err in accepting the petition for certiorari even if the motion for reconsideration of the RTC Order of March 9, 2007 was withdrawn by herein respondents before the RTC could act thereon. It is settled that the requirement on the filing of a motion for reconsideration prior to the institution of a petition for certiorari under Rule 65 of the Rules of Court admits of several exceptions, such as when the filing of a motion appears to be useless given the circumstances attending the action. Thus, we have repeatedly held:

The general rule is that a motion for reconsideration is a condition sine qua non before a petition for certiorari may lie, its purpose being to grant an opportunity for the court a quo to correct any error attributed to it by re-examination of the legal and factual circumstances of the case. There are, however, recognized exceptions permitting a resort to the special civil action for certiorari without first filing a motion for reconsideration. In the case of *Domdom v. Sandiganbayan*, it was written:

“The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court a quo had no jurisdiction; where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency of relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were ex parte or in which the petitioner had no opportunity to object; and where the issue raised is one purely of law or where public interest is involved.”[17] (emphasis supplied, and citations and underscoring omitted)

As correctly held by the CA, a motion for reconsideration, or the resolution of the trial court thereon, had become useless given that the particular acts which the movants sought to prevent by the filing of the motion were already carried out. Significantly, the heirs of the late Consing had filed a motion for reconsideration of the RTC's order, but withdrew it only after the trial court had decided to implement the writs notwithstanding the pendency of the motion and just a day before the scheduled hearing on said motion.

Forum-shopping exists when the elements of *litis pendencia* concur.

On the third issue, there is forum shopping when the elements of *litis pendencia* are present, i.e., between actions pending before courts, there exist: (1) identity of parties, or at least such parties as represent the same interests in

both actions, (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites are also constitutive of the requisites for auter action pendant or lis pendens.[18] Applying the foregoing, there was clearly a violation of the rule against forum shopping when Spouses Medado instituted Civil Case No. 797-C for injunction notwithstanding the pendency of Civil Case No. 00-11320 for rescission of contract and damages.

All elements of litis pendentia are present with the filing of the two cases. There is no dispute that there is identity of parties representing the same interests in the two actions, both involving the estate and heirs of the late Consing on one hand, and Spouses Medado on the other. The rescission case names “Soledad T. Consing, for herself and as administratrix of the estate of Antonio Consing” as plaintiff, with “Spouses Meritus Rey and Elsa Medado, [PNB] and the Register of Deeds of Cadiz City” as respondents. The injunction case, on the other hand, was instituted by Spouses Medado, against “(LBP) and the Heirs of the Late Antonio Consing, as represented by Dra. Soledad Consing.” The primary litigants in the two action, and their interests, are the same.

The two other elements are likewise satisfied. There is an identity of rights asserted and reliefs prayed for in the two cases, with the reliefs being founded on the same set of facts. In both cases, the parties claim their supposed right as owners of the subject properties. They all anchor their claim of ownership on the deeds of absolute sale which they had executed, and the law applicable thereto. They assert their respective rights, with Spouses Medado as buyers and the heirs as sellers, based on the same set of facts that involve the deeds of sale's contents and their validity. Both actions necessarily involve a ruling on the validity of the same contract as against the same parties. Thus, the identity of the two cases is such as would render the decision in the rescission case res judicata in the injunction case, and vice versa.

It does not even matter that one action is for the enforcement of the parties' agreements, while the other action is for the rescission thereof. In the similar case of *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, [19] we discussed:

Civil Case No. 91-2069 actually involves an action for specific performance; it thus upholds the contract and assumes its validity. Civil Case No. 91-2192, on the other hand, is for the nullification of the contract on the grounds of fraud and vitiated consent. While ostensibly the cause of action in one is opposite to that in the other, in the final analysis, what is being determined is the validity of the contract. x x x Thus, the identity of rights asserted cannot be disputed. Howsoever viewed, it is beyond cavil that regardless of the decision that would be promulgated in Civil Case No. 91-2069, the same would constitute res judicata on Civil Case No. 91-2192 and vice versa.[20] (emphasis supplied)

This was further explained in *Casil v. CA*, [21] where we ruled:

The Court of Appeals held that there can be no res adjudicata because there is no identity of causes of action between the two cases. We do not agree. In the two cases, both petitioner and private respondent brought to fore the validity of the agreement dated May 4, 1994. Private respondent raised this point as an affirmative defense in her answer in the First Case. She brought it up again in her complaint in the Second Case. A single issue cannot be litigated in more than one forum. As held in *Mendiola vs. Court of Appeals*:

The similarity between the two causes of action is only too glaring. The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. In Civil Case No. 58713, the action is to enjoin PNB from foreclosing petitioner's properties, while in Civil Case No. 60012, the action is one to annul the auction sale over the foreclosed properties of petitioner based on the same grounds. Notwithstanding a difference in the forms of the two actions, the doctrine of res judicata still applies

considering that the parties were litigating for the same thing, i.e. lands covered by TCT No. 27307, and more importantly, the same contentions and evidence as advanced by herein petitioner in this case were in fact used to support the former cause of action.”[22]

The CA was then correct in ordering the dismissal of the complaint in Civil Case No. 797-C for violation of the rule against forum shopping. The issue on the validity of the subject deeds of absolute sale can best be addressed in the action for rescission, as against the case for injunction filed by Spouses Medado. In a line of cases, we have set the relevant factors that courts must consider when they have to determine which case should be dismissed, given the pendency of two actions, to wit:

- (1) the date of filing, with preference generally given to the first action filed to be retained;
- (2) whether the action sought to be dismissed was filed merely to preempt the latter action or to anticipate its filing and lay the basis for its dismissal; and
- (3) whether the action is the appropriate vehicle for litigating the issues between the parties.[23]

We emphasize that the rules on forum shopping are meant to prevent such eventualities as conflicting final decisions.[24] This Court has consistently held that the costly consequence of forum shopping should remind the parties to ever be mindful against abusing court processes.[25] In addition, the principle of res judicata requires that stability be accorded to judgments. Controversies once decided on the merits shall remain in repose for there should be an end to litigation which, without the doctrine, would be endless.[26]

Given the foregoing grounds already warranting the denial of this petition, we deem it no longer necessary to take any action or to now rule on the issue of the non-joinder of the petitioner's husband in the petition.

WHEREFORE, premises considered, the instant petition for review on certiorari is hereby DENIED. Accordingly, the Court of Appeal's Decision dated September 26, 2008, which reversed and set aside the order of the Regional Trial Court, Branch 60, Cadiz City, dated March 09, 2007, is perforce AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Edgardo L. Delos Santos, concurring; rollo, pp. 31-43.

[2] Id. at 134-141.

[3] Id. at 55.

[4] Supra note 2.

[5] Rollo, pp. 140-141.

[6] Supra note 1.

[7] Rollo, pp. 42-43.

[8] Supra note 3.

[9] Rollo, p. 5.

[10] Id. at 103-105.

- [11] Id. at 103.
- [12] Republic v. Coalbrine International Philippines, Inc., G.R. No. 161838, April 7, 2010, 617 SCRA 491, 499.
- [13] G.R. No. 146548, December 18, 2009, 608 SCRA 394.
- [14] Id. at 405-407.
- [15] Bello v. Bonifacio Security Services, Inc., G.R. No. 188086, August 3, 2011.
- [16] Rollo, pp. 143-144.
- [17] Pineda v. Court of Appeals, G. R. No. 181643, November 17, 2010, 635 SCRA 274, 281-282.
- [18] Making Enterprises, Inc. v. Marfori, G.R. No. 152239, August 17, 2011.
- [19] G.R. No. 104019, January 25, 1993, 217 SCRA 517.
- [20] Id. at 530-531.
- [21] 349 Phil 187 (1998).
- [22] Id. at 200-201.
- [23] Villarica Pawnshop, Inc. v. Gernale, G.R. No. 163344, March 20, 2009, 582 SCRA 67, 81-82; Casil v. CA, supra note 21, at 204; Allied Banking Corp. v. CA, 328 Phil 710, 719 (1996).
- [24] Collantes v. Court of Appeals, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 568.
- [25] Asia United Bank v. Goodland Company, Inc., G.R. No. 191388, March 9, 2011.
- [26] Nacuray v. NLRC, 336 Phil 749, 757 (1997).

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