

**MARIA VDA. DE TOLENTINO AND GEORGE TOLENTINO,
PETITIONERS, VS. HON. FELIZARDO S. M. DE GUZMAN JUDGE,
COURT OF FIRST INSTANCE OF SURIGAO DEL NORTE AND RICARDO
GEE, RESPONDENTS.**

G.R. No. 61756. April 19, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari and prohibition with preliminary injunction seeking the annulment of the March 19, 1982 and August 2, 1982 Orders of respondent Judge denying petitioners' motion to dismiss and motion for reconsideration, respectively.

Herein petitioners were the plaintiffs in Civil Case No. 15080, of the then Court of First Instance of Cebu, 14th Judicial District, Branch IV entitled *George Tolentino, et al. vs. George Yama, et al.*, for recovery of sum of money and damages with preliminary attachment and garnishment. Herein respondent Ricardo Gee, on the other hand, was one of the defendants in the said case, and his properties, including two (2) pump boats, were levied on attachment. After trial of the said case, respondent Gee was absolved from any civil liability in a decision dated June 30, 1980 (Record, pp. 68-79), and in an order dated March 31, 1981 (*Ibid.*, p. 39), the then Court of First Instance of Cebu, acting on Gee's Ex-Parte Motion for the issuance of a Special Order (*Ibid.*, p. 38), directed the Provincial Sheriff of Surigao del Norte to release respondent Gee's attached properties. On April 14, 1981, respondent Gee filed a Motion to Condemn the Plaintiff and the Provincial Sheriff of Surigao del Norte for Damages (Record, pp. 42-43), alleging therein, among others, that the sheriff could not comply with the Court Order to release the two (2) pump boats because earlier, said sheriff without authority from the trial court and in conspiracy with the plaintiffs (herein petitioners), released subject properties to the latter, in violation of his duties as custodian of the properties under litigation, and as a result of which, said properties can no longer be found to his great damage and prejudice. On March 14, 1981, Deputy Sheriff of Surigao del Norte, Mr. Leopoldo B. Risma, filed his explanation and answer to the motion (*Ibid.*, pp. 46-47). In an order dated August 14, 1981 (*ibid.*, p. 49), said motion was held in abeyance until the trial court is clarified on the matter since it appears that Sheriff Risma had delivered respondent Gee's one (1) 9-horsepower WISCONSIN engine with Engine No. P-319-E 91A, and one (1) 10-horse power BRIDGESTON engine to a certain Valeriano Estorpe for petitioner Maria Vda. de Tolentino for safekeeping on April 21, 1976. Sheriff Risma was ordered to inform the Court in writing within ten (10) days from notice whether or not all the items belonging to respondent Gee and previously attached by him have been returned by him to respondent Gee. On August 15, 1981, Sheriff Risma filed a Manifestation (*Ibid.*, pp. 50-51) that the said engines were all stored in the Office of the Clerk of Court of the then Court of First Instance of Surigao del Norte for safekeeping, and that he had already informed respondent Gee that he could get the same any time during office hours. He prayed that respondent Gee be ordered to get said engines. In an Order dated September 16, 1981 (Rollo, p. 52), respondent Gee was authorized to take delivery of the said engines, and Sheriff Risma was directed to inform the Court of the delivery of the same to respondent Gee.

On October 20, 1981, respondent Gee filed with the then Court of First Instance of Surigao del Norte, 15th Judicial District, presided by herein respondent Judge, a complaint for damages and attorney's fees against petitioners and Deputy Sheriff Leopoldo B. Risma, docketed therein as Civil Case No. 3022 (Ibid., pp. 17-19). In the same, respondent Gee alleged, among others, that he is the owner of two (2) pump boats levied on attachment by Sheriff Risma by virtue of the Order of Attachment and Garnishment issued by the then Court of First Instance of Cebu in Civil Case No. R-15080, that on March 13, 1981, the then Court of First Instance of Cebu issued an Order directing the Provincial Sheriff of Surigao del Norte to release respondent Gee's attached properties to him (respondent Gee); and that despite the said order, his pump boats could not be released to him for the reason that Sheriff Risma had earlier delivered the same to the petitioners and the same could nowhere be located.

On December 8, 1981, petitioners moved for the dismissal of the complaint on the ground that: (1) there was no valid cause of action (2) there is an application for damages still pending between the same parties for the same cause in the sala of Judge Mario M. Dizon of the then Court of First Instance of Cebu, Branch IV, (3) the cause of action is barred by a prior judgment; and (4) claim for recovery of damages on account of the issuance of a writ of attachment cannot be the subject of a separate action (Record, pp. 209-28). After respondent Gee filed his opposition (Ibid., pp. 54-55) and petitioners filed their reply thereto, respondent judge, in an Order dated March 19, 1982 (Ibid., pp., 62-64), denied petitioners' motion to dismiss. A Motion for Reconsideration was filed (Ibid., pp. 65-66), but the same was denied in an Order dated August 2, 1982 (Ibid., p. 67). Hence, the instant petition.

The First Division of this Court, in a Resolution dated October 4, 1982, resolved to require the respondents to comment, and to let a temporary restraining order be issued (Ibid., p. 80). Pursuant thereto, a temporary restraining order was issued on the same date (Ibid., pp. 81-82), and respondent Gee filed his comment on November 24, 1982 (Ibid., pp. 93-98).

In a Resolution dated December 8, 1982, the First Division of this Court resolved to require the petitioners to file their reply (Ibid., but in the resolution of February 21, 1983, petitioners' reply was dispensed with; the petition was given due course and the case was submitted for decision without need for the parties to file memoranda.

Nonetheless, on March 9, 1983, petitioners filed their Reply to Respondents' Comment (Record, pp. 105-108) which was noted in the resolution of March 23, 1983.

Considering, however, the length of time that this case has been pending and to determine whether supervening events may have rendered this case moot and academic, this Court required the parties to move in the premises, in the resolution of June 13, 1988.

Both counsels for the petitioners and for private respondent manifested that no supervening events have transpired which would render the case moot and academic (Rollo, pp. 126-129).

Petitioners submit three (3) grounds for the allowance of their petition, to wit:

I

THAT RESPONDENT JUDGE ABUSED HIS DISCRETION WHEN HE DENIED THE MOTION TO DISMISS ON THE ISSUE OF THE PENDENCY OF ANOTHER CASE IN ANOTHER COURT.

II

THE RESPONDENT JUDGE ABUSED HIS DISCRETION WHEN HE REFUSED TO DISMISS THE COMPLAINT BECAUSE THE CAUSE OF ACTION IS BARRED BY PRIOR JUDGMENT.

III

THAT THE RESPONDENT JUDGE ABUSED HIS DISCRETION IN NOT DISMISSING THE PRIVATE RESPONDENT'S COMPLAINT FOR THE CLAIM OR RECOVERY OF DAMAGES ON ACCOUNT OF THE ISSUANCE OF A WRIT OF ATTACHMENT CANNOT BE THE SUBJECT OF A SEPARATE ACTION.

The instant petition is impressed with merit.

One of the grounds upon which a motion to dismiss may be made under Section 1, Rule 16 of the Rules of Court, is that there is another action pending between the same parties for the same cause (par. e). In order that this ground may be invoked, there must be: (1) identity of parties; or at least such representing the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to res adjudicata in the action under consideration (*Surigao Development Bank vs. Buslon*, 48 SCRA 308 /1972/; and *Quiapo vs. Dela Victoria*, 46 SCRA 139 /1972/).

In the instant case, after a careful study of petitioners' Motion to Dismiss (Record, pp. 20-29) and respondent Gee's opposition thereto (*Ibid.*, pp. 54-55), the presence of the above-enumerated requisites of lis pendens or autre action pendant is readily apparent (*Buan v. Lopez, Jr.*, 145 SCRA, pp. 37-38 /1986/).

There is no dispute that petitioners and respondent Gee are the parties in both Civil Case No. 15080 in the then Court of First Instance of Cebu and Civil Case No. 3022 in the then Court of First Instance of Surigao del Norte, and that in Civil Case No. 15080, respondent Gee's Motion to Condemn the plaintiffs (herein petitioners) and the Provincial Sheriff of Surigao del Norte for damages (Record, pp. 42-43), is grounded on exactly the same facts as in Civil Case No. 3022 (Rollo, pp. 17-19) which is the inability of the sheriff to produce the two (2) pump boats of respondent Gee with a similar prayer for damages against petitioners as defendants.

It is therefore, undeniable that between the two cases there exists identity of parties, or parties representing the same interests in both actions, identity of rights asserted and relief prayed for, the relief being founded on the same facts, and the identity is such that any judgment that will be rendered in Civil Case No. 15080, regardless of which party is successful, would amount to res judicata in Civil Case No. 3022. Thus, it has been held that an action involving the same issue, subject matter and some of the parties in another action earlier filed by the defendant in the latter suit, shall be dismissed to avoid multiplicity of suits (*Orellano vs. Alvestir*, 76 SCRA 536 [1977]).

On the other hand, respondent Gee's argument that when he filed the complaint in the then Court of First Instance of Surigao del Norte, he is deemed to have abandoned his motion with the Court of First Instance of Cebu, is untenable.

More recently, this Court had on several occasions condemned and penalized "forum shopping" or the act of litigants of filing the same suit in different courts (*Buan v. Lopez, Jr.*, *supra*). It was held to be an improper conduct that tends to degrade the administration of justice. Citing Section 17 of the Interim Rules and Guidelines, this court held that a violation thereof shall constitute contempt of court and shall be a cause for summary dismissal of all actions pending in the different courts (*E. Razon, Inc. et al. v. Philippine Port Authority et al.*, G.R. No. 75197, Resolution, July 31, 1986; *People v. C.A.*, 101 SCRA 450 [1980]; *Buan v. Lopez*, *supra.*).

More than that, this Court laid down the rule that the litigant's resort to forum shopping "not only furnishes

ground for giving their present action short shrift, but also lays the foundation for an inquiry into their liability for constructive contempt for having abused the processes of the courts, and their counsel's own liability for the same sanction and such other administrative responsibility as might be proper in the premises" (Minister of Natural Resources v. Heirs of Orval Hughes 155 SCRA, pp. 567-568 [1987]).

It will be recalled that in Civil Case No. 15080, the trial court has already issued an Order dated September 16, 1981 authorizing respondent Gee to take delivery of the engines in question which reportedly were in the Office of the Clerk of Court for safekeeping and directing Sheriff Risma to inform the court of aforesaid delivery.

However, respondent Gee, instead of complying with said order, filed Civil Case No. 3022 in another court for the same cause.

WHEREFORE the: a) subject Orders of respondent judge dated March 19, 1982 and August 2, 1982 are hereby Reversed and Set Aside; (b) Court of First Instance of Surigao del Norte, 15th Judicial District now Regional Trial Court, is ordered to dismiss Civil Case No. 3022 and to conduct no proceedings in connection therewith save in accordance with and in implementation of this decision; (c) respondent Gee, as well as his counsel Atty. Gabriel J. Canete, are warned against abuse of the processes of the Court and that a repetition of similar actions on their part as in the case at bar, shall be dealt with more severely by this Court.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

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