SULPICIA VENTURA, PETITIONER, VS. HON. FRANCIS J. MILITANTE, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, 7TH JUDICIAL DISTRICT, BRANCH XII, CEBU CITY; AND JOHN UY,...

G.R. No. 63145. October 05, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is a Petition for Certiorari assailing the Order[1] of public respondent directing her to file an Answer to the Complaint for a Sum of Money with Damages filed by private respondent after denying her Motion to Dismiss.[2]

There is no dispute as to the following relevant facts:

> Private respondent filed a Complaint for a Sum of Money and Damages against petitioner which reads:
>
> "REPUBLIC OF THE PHILIPPINES
>
> COURT OF FIRST INSTANCE OF CEBU
>
> 14th Judicial District
>
> BRANCH ____
>
> MR. JOHN UY, Proprietor of Cebu
>
> Textar Auto Supply,
>
> Plaintiff,
>
> - versus - C CIVIL CASE NO. R-21968
>
> For: SUM OF MONEY AND DAMAGES
>
> ESTATE OF CARLOS NGO as
>
> represented by surviving
>
> spouse Ms. SULPICIA VENTURA,
>
> Defendant.
>
> Oo -///
>
> "COMPLAINT
>
> "PLAINTIFF, thru counsel, unto this Honorable Court, most respectfully states that:
>
> "1. He is of legal age, Filipino and proprietor of Cebu Textar Auto Supply whose postal address is at 177 Leon Kilat St., Cebu City, while the defendant is an estate of Carlos Ngo as represented by surviving spouse Ms.

> Sulpicia Ventura with residence and postal address at-Back [sic] of Chong Hua Hospital, Cebu City where summons and other processes of the Court could be effected;
>
> "2. During the lifetime of Carlos Ngo he was indebted with the plaintiff in the amount of P48,889.70 as evidenced by the hereto attached statement marked as Annexes A and A-1 which account was obtained by him for the benefit of his family;
>
> "3. Said obligation is already due and demandable and the defendant thru Ms. Ventura who is ostensibly taking care of the properties/estate of deceased Carlos Ngo, refused, failed and neglected and still continues to refuse, fail and neglect to pay despite repeated demands;
>
> "4. As a consequence of the refusal to pay the plaintiff was compelled to retain the services of counsel with whom he contracted to pay P10,000.00 as attorney's fees. Upon institution of this complaint, he has further incurred initial litigation expenditures in the sum of P4,000.00.
>
> "WHEREFORE, this Honorable Court is most respectfully prayed to render judgment for the plaintiff by-
>
> "1. Ordering the defendant to pay the plaintiff the sum of P48,889.70 plus interest until the obligation is fully paid;
>
> "2. Ordering the defendant to pay the plaintiff the amount of P10,000.00 as attorney's fees plus P4,000.00 as reimbursement of the initial litigation expenditures.
>
> "FURTHER plaintiff prays for such other relief or remedy in accordance with law, justice and equity.
>
> "Cebu City, Philippines, March 29, 1982.
>
> "x x x"[3]

Petitioner moved to dismiss the foregoing complaint on the ground that "the estate of Carlos Ngo has no legal personality," the same being "neither a natural nor legal person in contemplation of law"[4]

In his Opposition to Motion to Dismiss,[5] petitioner insisted that since "the money claim subject of this case actually represents the costs of automotive spare parts/replacements contracted by deceased Carlos Ngo during his lifetime for the benefit/business of the family x x x the conjugal partnership x x x shall be accountable for the payment thereof."[6] Subsequently, private respondent's counsel manifested that he is poised to "amend the complaint in order to state the correct party defendant that he intends to sue in this case"[7] . The public respondent gave private respondent fifteen (15) days to make the amendment.

Petitioner filed a Motion for Reconsideration[8] of the order of public respondent permitting private respondent to amend his complaint. First, she argued that the action instituted by the private respondent to recover P48,889.70, representing the unpaid price of the automotive spare parts purchased by her deceased husband during his lifetime, is a money claim which, under Section 21, Rule 3 of the Revised Rules of Court, does not survive, the same having been filed after Carlos Ngo had already died. Second, she claimed that the public respondent never acquired jurisdiction over the subject matter of the case which, being an action to recover a sum of money from a deceased person, may only be heard by a probate court.

Private respondent opposed the foregoing motion.[9] He insisted that petitioner, being the wife of the deceased Carlos Ngo, is liable to pay the obligation which benefited their family.

Public respondent issued an Order giving private respondent twenty four (24) hours to file his amended complaint "so that the Court can determine for itself whether there is really a cause of action against the defendant who would be substituted to the Estate of Carlos Ngo," considering that "it would seem from the arguments of counsel for plaintiff x x x that the debt incurred by the deceased Carlong [sic] Ngo was in behalf of the conjugal

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partnership so that the wife of Carlos Ngo might be liable to pay the obligation".[10]

Private respondent then filed his Amended Complaint[11] with the new allegations underscored therein as follows:

"REPUBLIC OF THE PHILIPPINES

COURT OF FIRST INSTANCE OF CEBU

14th Judicial District

BRANCH XII

MR. JOHN UY, Proprietor of Cebu

Textar Auto Supply,

Plaintiff,

- versus - CCIVIL CASE NO. R-21968

For: SUM OF MONEY AND

MS. SULPICIA VENTURA, DAMAGES

Defendant.

Oo -x

"AMENDED COMPLAINT

"PLAINTIFF thru counsel, unto this Honorable Court most respectfully states that:

"1. x x x

"2. During the lifetime of Carlos Ngo he and his wife, the defendant herein are indebted with the plaintiff in the amount of P48,889.70 as evidenced by the hereto attached statement marked as Annexes A and A-1 which account was obtained for the benefit of their family and is being confirmed by their son Roy Ngo per his signature marked as Annex "A-2";

"3. x x x

"4. For several times, the defendant had concealed herself in her house when the plaintiff's representative went to her residence to collect payment of the said account;

"5. x x x

"x x x."[12]

Petitioner filed a Comment to Plaintiff's Amended Complaint.[13] She reiterated that whether the unsecured debt was contracted by her husband alone or as a charge against the conjugal partnership of gains, it cannot be denied that her husband was now deceased, the said debt does not survive him, the conjugal partnership of gains is terminated upon the death of one of the spouses, and the debts and charges against the conjugal partnership of gains may only be paid after an inventory is made in the appropriate testate or intestate proceeding.

Private respondent filed a Rejoinder to Defendant's Comment.[14] He countered that the defendant in his amended complaint was now petitioner and that she was not deceased, hence the inapplicability of the legal rules on the abatement of money claims in case the defendant dies pending their prosecution.

Public respondent issued the herein assailed order which reads as follows:

> "ORDER
>
> "This case is called today to deal on the motion for reconsideration of the order of this Court dated November 16, 1982 denying the motion of the defendant to dismiss the complaint.
>
> "In its order of November 16, 1982, the Court in the interest of justice advised the plaintiff to make the proper amendment so that the proper party defendant may be impleaded considering that the motion to dismiss then was anchored on the ground that the estate of Carlos Ngo was not a natural nor juridical person, hence it could not be sued. On December 23, 1982, the plaintiff amended its complaint and this time the defendant is already Sulpicia Ventura. The defendant now argues that even the amended complaint would show that this is really a collection of a debt of the conjugal partnership of deceased Carlong [sic] Ngo and his wife.
>
> "Perusing the amended complaint, the Court finds that in Paragraph 2 the allegation states: "During the lifetime of Carlos Ngo, he and his wife, the defendant, are indebted with the plaintiff in the amount of P48,689.70, (sic) etc.," so that the indebtedness was incurred by Carlos Ngo and defendant Sulpicia Ventura and since Carlos Ngo is now dead that will not preclude the plaintiff from filing a case against the living defendant, Sulpicia Ventura.
>
> "WHEREFORE, the motion for reconsideration is hereby DENIED and the defendant may file her answer within fifteen (15) days from today.
>
> "IT IS SO ORDERED."[15]

Petitioner scurried to this Court praying that the foregoing order of the public respondent be set aside and the amended complaint of private respondent, ordered dismissed.[16]

We grant the petition.

First. Sec. 1, Rule 3 of the Revised Rules of Court provided that "only natural or judicial persons, or entities authorized by law may be parties in a civil action". This was the rule in 1982 at the time that private respondent filed his complaint against petitioner. In 1997, the rules on civil procedure were revised, but Sec. 1, Rule 3 remained largely unaltered, except for the change of the word, "judicial" to "juridical".

Parties may be either plaintiffs or defendants. The plaintiff in an action is the party complaining, and a proper party plaintiff is essential to confer jurisdiction on the court.[17] In order to maintain an action in a court of justice, the plaintiff must have an actual legal existence, that is, he, she or it must be a person in law and possessed of a legal entity as either a natural or an artificial person, and no suit can be lawfully prosecuted save in the name of such a person.[18]

The rule is no different as regards party defendants. It is incumbent upon a plaintiff, when he institutes a judicial proceeding, to name the proper party defendant to his cause of action.[19] In a suit or proceeding in personam of an adversary character, the court can acquire no jurisdiction for the purpose of trial or judgment until a party defendant who actually or legally exists and is legally capable of being sued, is brought before it.[20] It has even been held that the question of the legal personality of a party defendant is a question of substance going to the jurisdiction of the court and not one of procedure.[21]

The original complaint of petitioner named the "estate of Carlos Ngo as represented by surviving spouse Ms. Sulpicia Ventura" as the defendant. Petitioner moved to dismiss the same on the ground that the defendant as named in the complaint had no legal personality. We agree.

Neither a dead person nor his estate may be a party plaintiff in a court action. A deceased person does not have

such legal entity as is necessary to bring action so much so that a motion to substitute cannot lie and should be denied by the court.[22] An action begun by a decedent's estate cannot be said to have been begun by a legal person, since an estate is not a legal entity; such an action is a nullity and a motion to amend the party plaintiff will not likewise lie, there being nothing before the court to amend.[23] Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, a decedent does not have the capacity to be sued and may not be named a party defendant in a court action.[24]

Second. It is clear that the original complaint of private respondent against the estate of Carlos Ngo was a suit against Carlos Ngo himself who was already dead at the time of the filing of said complaint. At that time, and this, private respondent admitted, no special proceeding to settle his estate had been filed in court. As such, the trial court did not acquire jurisdiction over either the deceased Carlos Ngo or his estate.

To cure this fatal defect, private respondent amended his original complaint. In his amended complaint, private respondent deleted the estate of Carlos Ngo and named petitioner as the defendant. When petitioner, in her comment to the amended complaint, reasoned that the conjugal partnership of gains between her and Carlos Ngo was terminated upon the latter's death and that the debt which he contracted, assuming it was a charge against the conjugal property, could only be paid after an inventory is made in the appropriate testate or intestate proceeding, private respondent simply reiterated his demand that petitioner pay her husband's debt which, he insisted, redounded to the benefit of everyone in her family.

It is true that amendments to pleadings are liberally allowed in furtherance of justice, in order that every case may so far as possible be determined on its real facts, and in order to speed the trial of causes or prevent the circuitry of action and unnecessary expense.[25] But amendments cannot be allowed so as to confer jurisdiction upon a court that never acquired it in the first place.[26] When it is evident that the court has no jurisdiction over the person and the subject matter and that the pleading is so fatally defective as not to be susceptible of amendment, or that to permit such amendment would radically alter the theory and the nature of the action, then the court should refuse the amendment of the defective pleading and order the dismissal of the case.[27]

Moreover, as correctly argued by petitioner, the conjugal partnership terminates upon the death of either spouse.[28] After the death of one of the spouses, in case it is necessary to sell any portion of the conjugal property in order to pay outstanding obligations of the partnership, such sale must be made in the manner and with the formalities established by the Rules of Court for the sale of the property of deceased persons.[29] Where a complaint is brought against the surviving spouse for the recovery of an indebtedness chargeable against said conjugal property, any judgment obtained thereby is void.[30] The proper action should be in the form of a claim to be filed in the testate or intestate proceedings of the deceased spouse.[31]

In many cases as in the instant one, even after the death of one of the spouses, there is no liquidation of the conjugal partnership. This does not mean, however, that the conjugal partnership continues.[32] And private respondent cannot be said to have no remedy. Under Sec. 6, Rule 78 of the Revised Rules of Court, he may apply in court for letters of administration in his capacity as a principal creditor of the deceased Carlos Ngo if after thirty (30) days from his death, petitioner failed to apply for administration or request that administration be granted to some other person.

WHEREFORE, the instant petition for certiorari is GRANTED. The Amended Complaint filed by private respondent is HEREBY DISMISSED.

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SO ORDERED.

Pardo, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), and Kapunan, J., on official leave.

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[1] Annex "K" of the Petition, Rollo, p. 36.

[2] Annex "B" of the Petition, Rollo, p. 16. Petitioner's Motion for Reconsideration was also denied.

[3] Annex "A" of the Petition, Rollo, pp. 13-15.

[4] Annex "B" of the Petition, Rollo, p. 16.

[5] Annex "C" of the Petition, Rollo, pp. 17-18.

[6] Annex "C" of the Petition, Rollo, p. 17.

[7] Annex "D", Rollo, p. 19.

[8] Annex "E" of the Petition, Rollo, pp. 20-22.

[9] Annex "F" of the Petition, Rollo, pp. 26-27.

[10] Annex "G", Rollo, p. 28.

[11] Annex "H", Rollo, pp. 29-30.

[12] Ibid.

[13] Annex "I", Rollo, pp. 32-33.

[14] Annex "J", Rollo, pp. 34-35.

[15] Annex "K", Rollo, p. 36.

[16] Rollo, p. 12.

[17] 59 Am Jur 2d, Sec. 19, p. 407.

[18] Ibid.

[19] 59 Am Jur 2d, Sec. 41, p. 438.

[20] Id., Sec. 42, p. 439.

[21] Ibid.

[22] 59 Am Jur 2d, Sec. 20, p. 407, citing Robertson v. Brown, 75 ND 109, 25 NW 2d 781.

[23] Id., p. 408, citing Estate of Schoeller v. Becker, 33 Conn Supp 79, 360 A2d 905.

[24] 59 Am Jur 2d, Sec. 42, p. 440, citing Bricker v. Borah (5th Dist) 127III App 3d 722, 82 III Dec. 707, 469 NE2d 241; Jacobson v. Union Story Trust & Sav. Bank (Iowa) 338 NW2d 161; Cromwell v. Ripley, 11 Md App 173, 273 A2d 218; Chandler v. Dunlop, 311 Mass 1, 39 NE2d 969; Thompson v. Peck, 320 Pa 27, 181 A 597; Gillespie v. Johnson, 157 W Va 904, 209 SE 2d 143.

[25] Regalado, Florenz D., Remedial Law Compendium, Volume One, 1997 edition, p. 181, citing Cese v. GSIS,

109 Phil. 306, 309 (1960).

[26] Rosario and Untalan v. Carangdang, et al., 96 Phil. 845 (1955), cited in Campos Rueda Corporation v. Bautista, 6 SCRA 240, 244 (1962).

[27] Alvarez, et al. v. Commonwealth of the Phil., et al., 65 Phil. 302, 315-316 (1938).

[28] Art. 175, Civil Code; Art. 126, Family Code.

[29] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume One with the Family Code of the Philippines, 1990 edition, p. 463.

[30] Francisco, Vicente J., The Revised Rules of Court in the Philippines, Special Proceedings, Volume V-B, 1970 edition, p. 182, citing Calma v. Tanedo, 66 Phil. 594, 598 (1938).

[31] Tolentino, supra.

[32] Id., p. 466.

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