

ROSITA ZAFRA BANTILLO, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND ELSA MANIQUIS-SUMCAD, RESPONDENT.*G.R. No. 75311. October 18, 1988*

Ponente: FELICIANO, J.

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The subject of the present Petition for Review is the Decision[1] dated 3 April 1986 of the then Intermediate Appellate Court in AC-G.R. CV 05774 (entitled "Rosita Zafra Bantillo for herself and in representation of the Heirs of Spouses Candido Zafra and Maria Pimentel Zafra, plaintiffs-appellants versus Elsa Maniquis-Sumcad, defendant-appellee"). The appellate court affirmed a 2 August 1983 Order of Branch 2 of the then Court of First Instance of North Cotabato, ordering: (a) the dismissal of the Complaint in Civil Case No. 161; and (b) the striking out of the Amended Complaint filed in the same case.

The case at bar originated from a Complaint for Reconveyance[2] (docketed as Civil Case No. 161), dated 19 April 1982, filed by petitioner Rosita Zafra Bantillo against respondent Elsa Maniquis-Sumcad with the Court of First Instance of North Cotabato. The action involved a 240 square meter parcel of land (Lot No. 63, BSD-11551) situated in the poblacion of Midsayap, North Cotabato. In the Complaint, it was alleged that petitioner Bantillo (plaintiff below) "is the surviving heir" of the deceased spouses, Candido Zafra and Maria Pimentel Zafra; that the Zafra spouses had occupied and possessed Lot No. 63 "under claim of ownership since 1950;" that petitioner, "as surviving heir and in representation of the heirs of [the Zafra] spouses," had been in open and continuous possession and occupation of Lot No. 63 ever since the death of the spouses; that by virtue of Original Certificate of Title No. P-35267 issued in the name of respondent Sumcad, respondent had claimed ownership of the disputed land and had sought petitioner's removal therefrom; and that respondent had rejected demands to reconvey the land to petitioner.

Respondent Sumcad (defendant below) filed a "Motion for Bill of Particulars"[3] in response to the complaint. In that motion, respondent, Sumcad requested that petitioner Bantillo be directed by the court: (a) "to specify what kind of surviving heir she is x x x;" and (b) "to specify by what right or authority she represents the so-called heirs of the spouses Candido Zafra and Maria Pimentel Zafra x x x and [to show] the papers under which she is authorized to represent them in court, and also [to specify and identify] these other heirs by name and the nature of their heirship."

On 16 June 1982, petitioner Bantillo questioned the propriety of respondent Sumcad's motion.[4] Petitioner Bantillo alleged that the matters mentioned in the "Motion for Bill of Particulars" were not essential to enable respondent Sumcad to file an answer to the complaint, that such matters are not proper subjects of a motion for bill of particulars.

The subsequent facts, which are stated in the appellate court's decision presently under review, are not disputed:

"In response to a motion for a bill of particulars, regarding the complaint filed by the plaintiff, the latter's counsel manifested in open court that she was willing to specify the names of the heirs allegedly being

represented by plaintiff Rosita Bantillo as well as to submit the special power of attorney executed by said heirs in plaintiff's favor. Hence, the court a quo issued the following Order dated July 5, 1982:

'This is a hearing on the motion for bill of particulars and the opposition thereto. The counsel for the plaintiff agreed to specify the names of the heirs and to submit a special power of attorney executed by said heirs in favor of the first-named plaintiff, Rosita Zafra Bantillo. After the amendments made by the counsel, the counsel is directed to furnish the counsel for the defendant a copy of the said amendments.

Defendant is given fifteen (15) days from receipt of the copy of the amended complaint within which to file the defendant's responsive pleading.

The pre-trial will be set as soon as the proper amendments [are] submitted.

SO ORDERED.' (p. 46, Records)

On September 3, 1982, counsel for the defendant filed a motion to dismiss. In support of the motion, it was pointed out that the plaintiff had not as yet submitted her amended complaint as directed by the court. Neither had the plaintiff complied with the July 5, 1982 Order of said court directing her to specify the other Bantillo heirs and to produce the special power of attorney authorizing her to represent their heirs in the action.

Plaintiff filed an Opposition to the Motion to dismiss. The Opposition stated, among other things: 'that the delay was due to the fact that this Honorable Court (had) for quite a time no presiding judge, so that even if said pleading be filed, it still could not be acted upon.' Attached to the Opposition was an amended complaint.[5]

Reacting to the Opposition, defendant on July 5, 1983 interposed a Rejoinder with Motion to Strike Out/Dismiss Plaintiff's Pleadings, pointing out therein that the plaintiff's compliance with the court's Order was made more than one year from the issuance of the said Order. Invoking Section 1(c), Rule 12 of the Rules of Courts which grants a party only a ten-day period within which to respond to a bill of particulars, the defendant denounced plaintiff's tardy compliance as 'an outright sham and a mere ploy intended to outsmart this Honorable Court and the parties.'

Not to be outdone, plaintiff through her counsel filed a Rejoinder to the Opposition to the Motion to Dismiss, arguing that the late compliance to [sic] the lower court's July 5, 1982 Order was excusable under Section 1, Rule 10 of the Rules of Court which allows amendment of pleadings without regard for mere technicalities.

On August 2, 1983, the court a quo issued the Order which is the subject of this present appeal. In this Order the lower court decreed as follows:

'WHEREFORE, the Court, finding the Motion to Strike Out/Dismiss Plaintiff's Pleadings, filed by the Defendant's Counsel meritorious, grants the same and orders the dismissal of the complaint and the striking out of the amended complaint, with costs.

SO ORDERED.' (p. 49, Ibid.)

In her appeal, the plaintiff alleges five (5) errors purportedly committed by the lower court. However, for purposes of resolving the appeal, We deem it necessary only to consider the first two (2) assignments of error, namely: The court a quo erred:

'I. In striking [out] the amended complaint on the grounds:

A. That it must follow the agreement embodied in the Order of the Court dated July 5, 1982;

B. That the amended complaint must be filed "at anytime within ten (10) days after it is served;"

II. In dismissing the complaint for plaintiff's failure to comply with the Orders of the court.'

x x x x x x x x"

The trial and appellate courts both held that dismissal of petitioner Bantillo's complaint in this case was warranted as she had been "guilty of an unreasonable delay in complying with the July 5, 1982 Order of the [trial] court." The appellate court cited in this connection Section 1 (c) of Rule 12 of the Revised Rules of Court under which petitioner Bantillo had ten (10) days from notice of the trial court's Order of 5 July 1982 -- or until 15 July 1982 -- within which to comply with the directives contained in that Order. In addition, both courts held that the amended complaint should have been filed, at the very least, within a "seasonable" time and in a manner consistent with "[petitioner's] agreement as embodied in the Order of the [trial] court dated July 5, 1982." Finally, it was noted that the alleged vacancy at Branch 18 of the Regional Trial Court (which succeeded Branch 2 of the Court of First Instance) of North Cotabato at Midsayap lasted only from 18 January 1983 until 29 March 1983, or for a period of just a little over two (2) months. This latter circumstance further convinced the two (2) courts that petitioner Bantillo's amended complaint, which was submitted to the trial court on 22 June 1983, had not been filed seasonably.

The present Petition for Review was received by this Court on 1 August 1986. Respondent filed an Answer[6] on 28 October 1986, to which petitioner submitted a Reply.[7] In a Resolution[8] dated July 27 1987, the Court, without giving due course to the Petition, required the parties to submit their respective Memoranda.

Petitioner Bantillo contests the application in this case of Section 1 of Rule 12 of the Revised Rules of Courts, alleging once more that the matters mentioned in respondent Sumcad's disputed motion are "not within the scope and ambit of a bill of particulars." Petitioner also alleges that "there was really no bill of particulars require of [petitioner]" by the trial court. Furthermore, it is contended that Rule 10 of the Rules of Court is the applicable provision here.

1. Section 1, Rule 12 of the Revised Rules of Court reads, in part:

"Section 1. Motion for bill of particulars. -- Before responding to a pleading or, if no responsive pleading is permitted by these rules, within ten (10) days after service the pleading upon him, a party may move for a more definite statement or for a bill of particulars of an matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall point out the defects complained of and the details desired.

x x x x x x x x"

(Italics supplied)

Under this Rule, the remedy available to a party who seeks clarification of any issue or matter vaguely or obscurely pleaded by the other party, is to file a motion, either for "a more definite statement" or for a bill of particulars. An order directing the submission of such statement or bill, further, is proper where it enables the party movant intelligently to prepare a responsive pleading, or adequately to prepare for trial.

The title of the (original) Complaint in Civil Case No.161 expressly stated that petitioner Bantillo had then brought suit "for herself and in representation of the Heirs of Spouses Candido Zafra and Maria Pimentel Zafra." In paragraphs 2 and 3 of the Complaint, petitioner Bantillo alleged her capacity personally to maintain the judicial action for reconveyance, manifesting that she is the "surviving heir" of the Zafra spouses, the alleged original owners of the land under litigation. The Court notes, however, the absolute lack of allegations in the Complaint

regarding the petitioner's capacity or authority to bring suit in behalf of her alleged co-heirs and co-plaintiffs. On this matter, Section 4 of Rule 8 of the Revised Rules of Court specifically provides:

"Section 4. Capacity. -- Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." (Underscoring supplied)

Petitioner Bantillo having failed to allege in her Complaint a factual matter which, under the Rules, must be alleged or pleaded, respondent Sumcad was not unjustified in moving for clarification of such matter. Knowledge of the identity or identities of petitioner's alleged co-heirs and co-plaintiffs and, more importantly, of the basis of petitioner's claimed authority to represent the latter, would obviously be useful to respondent in the preparation of a responsive pleading; respondent Sumcad should be given sufficient opportunity intelligently to contest these matters and possibly to raise the same as issues in her Answer. The Court hence believes that the "Motion for Bill of Particulars" filed by respondent Sumcad was not improper.

2. The first paragraph of the disputed 5 July 1982 Order (quoted supra, pp. 3-4) of the trial court in Civil Case No. 161 states that petitioner Bantillo, through counsel, had agreed to specify the names of her alleged co-heirs and to submit a special power of attorney authorizing her to represent said co-heirs in the action for reconveyance. Petitioner's counsel was also directed to furnish respondent's counsel with a copy of the corresponding "amendments". The second paragraph of the Order continued:

"Defendant is given fifteen (15) days from receipt of the copy of the amended complaint within which to file the defendant's responsive pleadings." (Underscoring supplied)

As pointed out by petitioner in her Memorandum, the trial court did not in its Order of 5 July 1982 expressly direct petitioner Bantillo to submit a bill of particulars. What was in fact required of petitioner was an amended complaint, which would incorporate the "amendments" mentioned in the first paragraph of the Order. This singular circumstance, however, does not preclude application in this case of Rule 12, section 1 (c) of which provides:

"x x x x x x x x

(c) Refusal. -- If an order of the court to make a pleading more definite and certain or for a bill of particulars is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the court may order the striking out of the pleading to which the motion was directed or make such other order as it deems just. It may, upon motion, set aside the order, or modify it in the interest of justices." (Underscoring supplied)

Under the above provision, the court may upon motion in appropriate cases direct the adverse party (a) to file a bill of particulars, or (b) to make the pleading referred to in the motion more definite and certain, either by amending or supplementing the same. The trial court's disputed Order of 5 July 1982 falls squarely within the second category. As the Order itself did not specify the period for compliance with its terms, petitioner Bantillo was bound to comply therewith within ten (10) days from notice thereof, i.e., on or before 15 July 1982.

3. Petitioner Bantillo's reliance on Section 2, Rule 10 of the Revised Rules of Court -- which allows amendment of pleadings "once as a matter of course at any time before a responsive pleading is served" -- is misplaced. That provision does not apply in situations where it is the court itself that orders a party litigant to amend his or her pleading. Where, as in the case at bar, the trial court orders the amendment after a motion for a bill of particulars has been filed by the adverse party and heard by the court, the applicable provision is Section 1 of Rule 12 of the Rules of Court; the amended pleading must be filed within the time fixed by the court, or absent such a

specification of time, within ten (10) days from notice of the order.

4. The record shows that petitioner Bantillo filed her Amended Complaint with the trial court only on 22 June 1983, or more than eleven (11) months after the reglementary period of ten (10) days had expired. The trial judge found no merit in the reasons advanced by petitioner Bantillo for such delay and dismissed the Complaint, declaring that an "unreasonable length of time" had already elapsed.

There is of course no question that petitioner's Amended Complaint was filed out of time. Nonetheless the Court believes that in the interest of substantial and expeditious justice,[9] the Amended Complaint should not have been dismissed and ordered stricken from the record. In the first place, the amendment of the original complaint consisted simply of deletion of any reference to "other heirs" of the Zafra spouses as co-plaintiffs in the action for reconveyance; petitioner, in other words, clarified that she alone was plaintiff and heir and therefore was no longer suing also in a representative capacity. This amendment, in the second place, imposed no substantial prejudice upon respondent Sumcad and was thus formal in character.[10] As a matter of fact, Sumcad had not yet filed any responsive pleading at all and had not disclosed the nature and basis of her own claim of ownership of Lot No. 63. The issues had not yet been joined. Thirdly, the Amended Complaint was already before the trial court and it could have and should have proceeded with the case.

Alternatively, if it be assumed that the Amended Complaint was properly dismissed, such dismissal should not, for the same reasons of substantial and expeditious justice, be deemed as having the effect of an adjudication upon the merits and hence should be regarded as without prejudice to petitioner's right to refile her complaint in its amended form. Under this alternative hypothesis, to require petitioner to refile her complaint in a new action would appear little more than compelling her to go through an idle ceremony. Under either view, therefore, the trial court should have admitted the Amended Complaint instead of striking it off the record. Public policy favors the disposition of claims brought to court on their merits, rather than on any other basis.¹² The trial court's discretion should have been exercised conformably with that public policy.

ACCORDINGLY, the appellate court's Decision appealed from is REVERSED and the Regional Trial Court, Branch 18, of North Cotabato at Midsayap, is DIRECTED to admit petitioner's Amended Complaint and promptly to resume proceedings in Civil Case No. 161. This Resolution is immediately executory. No pronouncement as to costs.

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

[1] Rollo, p. 33-37, Annex "G" of Petition.

[2] Id., pp. 19-21, Annex "A" of Petition.

[3] Id., p. 22, Annex "B" of Petition.

[4] Id., pp. 23-24, Annex "C" of Petition.

[5] Id., pp. 25-27, Annex "D" of Petition. Under the Amended Complaint, only petitioner's name appeared as plaintiff in the action for reconveyance. The other alleged heirs of the deceased spouses, Candido Zafra and Maria Pimentel Zafra, did not appear as co-plaintiffs and are not referred to.

[6] Id., pp. 51-58.

[7] Id., 64-69.

[8] Id., p. 71.

[9] See *Dael v. Teves*, 136 SCRA 196 (1985).

[10] In this connection, Section 4, Rule 10 of the Revised Rules of Court states:

"Sec. 4. Formal amendments. -- A defect in the designation of the parties may be summarily corrected at any stage of the action provided no prejudice is caused thereby to the adverse party."

12 See *Continental Leaf Tobacco (Phil.) Inc. v. Intermediate Appellate Court*, 140 SCRA 269 (1985); and *Yellow Ball Freight Lines, Inc. v. Belfast Surety and Insurance Company, Inc.*, 119 SCRA 106 (1982).

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