

EDITH JUINIO ATIENZA, PETITIONER, VS. COURT OF APPEALS, HON. SERGIO PESTANO, SALVADORA ATIENZA AND MARIA BEATRIZ ATIENZA, RESPONDENTS.

G.R. No. 85455. June 02, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

The sole issue in this petition for certiorari is whether or not *litis pendentia* obtains in Civil Case No. V-5456 before the Roxas City Court and in SP Proc. No. G-52510 before the Quezon City Court.

The undisputed facts are as follows:

Andres Atienza died intestate on June 26, 1987 leaving behind three (3) heirs, namely: (1) respondent Salvadora Atienza, his mother; (2) herein petitioner Edith Juinio Atienza, his widow; and (3) respondent Maria Beatriz Atienza, his adopted daughter.

On September 21, 1987, respondent Salvadora Atienza and Maria Beatriz Atienza filed before the Regional Trial Court of Roxas City Civil Case No. V-5456 for damages, accounting and partition against herein petitioner. In their complaint,[1] respondents alleged that petitioner used a fake birth certificate of Ma. Beatriz Atienza in claiming insurance, retirement and other benefits. This alleged tortious act effectively deprived Salvadora Atienza of her share in the estate of the deceased. Accordingly, plaintiffs prayed that Edith Juinio Atienza should be held liable for moral and exemplary damages and that an accounting and partition be ordered.

Instead of filing an answer to the complaint, petitioner filed a case docketed as SP. Proc. No. Q-52510 for issuance of letters of administration of the estate before the Quezon City Court and then filed a Motion to Dismiss the case before the Roxas City Court on the ground that there was a pending case involving the same parties and the same action before the Quezon City Court.

Respondent Judge Sergio Pestano denied the Motion to Dismiss and appointed Salvadora Atienza as guardian ad litem of Maria Beatriz Atienza. Respondent judge likewise denied the Motion for Reconsideration filed by petitioner herein.

Petitioner then filed an answer to the complaint in Civil Case No. V-5456 and later filed in the Court of Appeals a Petition for Certiorari and Prohibition with preliminary injunction against respondent Judge alleging that the latter committed grave abuse of discretion in denying the abovementioned motion of herein petitioner.

Finding no grave abuse of discretion, the Court of Appeals, in its Decision[2] dated August 12, 1988 dismissed the Petition for Certiorari and Prohibition thereby affirming the ruling of the trial court that Civil Case No. V-5456 could not be dismissed on the ground of *litis pendentia*. Petitioner then filed a Motion for Reconsideration which was denied by the Court of Appeals in its Resolution[3] dated October 18, 1988. She has now elevated the matter before this Court assigning as grounds for the petition the following:

"1. The respondent court has decided questions of substance in the instant case in violation of and/or contrary to the express provisions of Rule 74, Sec. 1, Rules of Court, in effect preferring an ordinary action of partition to an administration proceedings for the settlement of the estate of the deceased Andres I. Atienza notwithstanding the fact that the said deceased left debts. (Underscoring Supplied)

2. Respondent court has likewise decided questions of substance in the instant case in a way not in accordance with but contrary to the rulings of the Supreme Court in *Arcillas v. Montejo*, G.R. No. L-21725, November 29, 1968, 26 SCRA 197, 201-202, and *Teodoro v. Mirasol*, 53 O.G. 8088."

Petitioner argues that the trial court and appellate courts erred in not dismissing Civil Case No. V-5456 because: (1) as provided in Sec. 1, Rule 74 of the Rules of Court, an action for partition could not be resorted to when the decedent left debts as in this case; and (2) SP. Proc. No. Q-52510 is the proper proceeding for the settlement of the estate of Andres I. Atienza because in such proceeding, all the matters and issues between and among the heirs, the creditors, and the other claimants can be finally and definitely settled.

Would the dismissal of Civil Case No. V-5456 be warranted?

Petitioner anchors her argument for the dismissal of the case on *litis pendentia*, as provided in Sec. 1, Rule 16 of the Rules of Court which provides:

"Sec. 1. Grounds. - Within the time for pleading a Motion to Dismiss the action may be made on any of the following grounds:

xxx xxx xxx

(e) That there is another action pending between the same parties for the same cause."

Citing *Teodoro v. Mirasol*,^[4] petitioner argues that even if the pending SP Proc. Q-52510 case was filed later than the case sought to be dismissed, the latter may be properly dismissed if the pending case is a more proper suit to resolve the issues between the parties.

Petitioner's contentions are unmeritorious.

The Court of Appeals has correctly stated in its Decision:

The lower court correctly ruled that *lis pendens* does not obtain. The requisites for *lis pendens* as a ground for dismissal of a complaint are (1) identity of parties or at least such representing the same interest in both actions; (2) identity of rights asserted as prayed for, the relief being founded on the same facts; and (3) the identity in both cases is such that the judgment may be rendered in the pending case, regardless of which party is successful would amount to *res judicata* to the other case.

Not all these requisites are present herein.

While the parties in Civil Case No. V-5456 before the Roxas City court and in SP Proc. No. Q-52510 are the heirs of the late Andres I. Atienza - his mother, Salvadora Atienza; his wife, Edith Juinio Atienza; and adopted child of the decedent, Maria Beatriz Atienza, the cause of action is different. Civil Case No. 5456 is for damages, accounting and partition, whereas SP Proc. No. Q-52510 is a proceeding for the intestate estate of the deceased Andres Atienza. In Civil Case No. 5456, plaintiffs seek to recover moral damages from the defendant arising out of alleged tortious acts, and a decision in this cause of action would not constitute *res judicata* in SP Proc. No. Q-52510."

Petitioner insists, however, that the causes of action in the two proceedings are similar because Civil Case No. V-5456 is principally an action for partition of part of the estate of the late Andres I. Atienza. Suffice it to say, however, that the Court of Appeals has correctly differentiated Civil Case No. V-5456 from SP Proc. No.

Q-52510. The former is for damages arising from wrongful acts while the latter is for the administration of the estate. Moreover, in Civil Case No. V-5456, the prayer for order of partition of the estate is an incident of the finding of the court that petitioner herein committed wrongful acts in order to acquire the properties of the decedent to the prejudice of complainants, private respondents herein. Res judicata would not even arise between the two cases.

Petitioner has also cited the case of *Teodoro v. Mirasol*[5] to bolster her claim that the case in the Roxas City Court should be dismissed because of *litis pendentia*. A scrutiny of the cited decision discloses that the Court dismissed the first case because a claim for damages was not the central cause of action.

The court said:

"The claim for damages is also invoked as a ground for allowing the continuance of the action. We note that this supposed cause of action is merely an incident of the main question of whether or not plaintiff should be allowed to continue to lease for two years more. It is not alleged as an independent cause of action. It is not set forth in a paragraph different from the others as the Rules require."

In the matter now before us, Civil Case No. V-5456 is principally for damages and is alleged as the first cause of action in the complaint.

Hence, reliance on *Teodoro v. Mirasol*, is misplaced.

Petitioner has likewise cited the case of *Arcillas v. Montejo*[6] to support her claim that respondent Judge erred in preferring an ordinary action of partition to an administration proceeding for the settlement of the estate of the deceased Andres Atienza, notwithstanding the fact that the deceased left debts.

However, a study of the said case only reaffirms the options granted by law to the heirs, viz., either a special proceeding in the extra-judicial settlement of the estate or an ordinary action of partition. It bears stressing that private respondents herein filed an action for damages in Civil Case No. V-5456 with accounting and partition as incidents of the principal action.

The Court notes further that SP Proceeding No. Q-52510 in Quezon City was filed by petitioner long after Civil Case No. V-54561 was instituted in Roxas City.

As the Court of Appeals observed:

"It did not escape our scrutiny that the SP Proc. No. 52510 in Quezon City was filed by petitioner long after the Civil Case No. V-5456 was instituted in Roxas City. Petitioner's motion to dismiss was filed after she was granted extension of time to file answer in Civil Case No. V-5456 thus enabling her in the meantime to institute the special proceedings in Quezon City which petitioner has used in seeking the dismissal of the Roxas City case.

As to which of the two suits in court ought to be dismissed, the special proceedings in Quezon City in contrast with SP Proc. No. Q-52510, is already much in progress, a complaint, and an answer with counterclaim have been filed, fully joining the issues. We do not deem it proper to allow petitioner to bring the issues in Civil Case V-5456 to another court, or to withdraw them from the forum before which they had already placed them for resolution."

Obviously, petitioner filed SP Proceeding No. Q-52510 only as an afterthought to evade liability for her alleged tortious acts in the event that they be proved in Civil Case No. 5456. We cannot sanction this behavior by ordering the dismissal of Civil Case No. V-5456.

On February 11, 1991, respondent Salvadora Atienza died and was survived by her sole heir and daughter, Suzette

Atienza del Rosario. Counsel for deceased respondent Salvadora Atienza filed a Manifestation and Motion[7] praying for the substitution of Salvadora Atienza by Suzette Atienza del Rosario. The substitution prayed for is hereby granted.

Lastly, this Court has held, time and time again, that an order denying a motion to dismiss being merely interlocutory, it cannot be the basis of a petition for certiorari.[8] We have ruled that:

"An order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,' e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a 'final' judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case." [9] (Underscoring supplied)

We agree with the Court of Appeals that the remedy in case of denial of a motion to dismiss is by appeal in due course after the case has been decided on the merits. To allow all interlocutory orders to be the subject of review by certiorari would, not only delay the administration of justice, but also unduly burden the court.

WHEREFORE, the petition is hereby DENIED for lack of merit and the respondent Court's decision AFFIRMED in toto with costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] Annex "A" of Reply; Rollo, pp. 49-55.

[2] Annex "A" of Petition; Rollo, pp. 15-18; Decision, *Atienza v. CA, et al.*, CA-G.R. SP No. 14667, penned by Victor, J., concurred in by Tensuan and Aldecoa, Jr., JJ.

[3] Annex "B" of Petition; Rollo, pp. 20-21.

[4] 53 O.G. 8088.

[5] (L-8934 53 O.G. 8088, May 18, 1956) L-8934, May 18, 1956 99 Phil 150.

[6] 26 SCRA 197.

[7] Rollo, p. 111.

[8] *Day v. RTC of Zamboanga City*, Br. XIII, G.R. No. 79119, November 22, 1990; *Prudential Bank and Trust Co. v. Macadaez, et al.*, No. L-10454, May 25, 1957; *People of the Phil. v. CA, et al.*, L-51635, December 14, 1982, 119 SCRA 162.

[9] *Denso (Phils.) Inc. v. The Intermediate Appellate Court, et al.*, L-75000, February 27, 1987.

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