

**ANTONIO DE ZUZUARREGUI, JR., ENRIQUE DE ZUZUARREGUI, AND
PACITA JAVIER, PETITIONERS, VS. THE HON. COURT OF APPEALS,
THE HON. JUDGE RAMON P. MAKASIAR, BR. 35 OF THE REGIONAL
TRIA...**

G.R. No. 85661. June 25, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals* dated August 29, 1988, dismissing petitioners' petition for certiorari and injunction with prayer for temporary restraining order, and the resolution dated October 27, 1988, denying the motion for reconsideration of said decision.

The pivotal issue is whether or not the denial of the motion to dismiss in this case is a proper subject for certiorari.

It appears that on December 11, 1987, the private respondent filed a complaint against the petitioners with the Regional Trial Court of Manila, Branch 35, docketed as Civil Case No. 87-43109, for collection of attorney's fees for legal services rendered to the latter in an expropriation case and/or damages for breach of their written commitment that he shall act as their counsel in all stages of the proceedings until its final determination.

The records also show that plaintiff-respondent also filed another Civil Case No. Q-39001, to recover alleged unpaid attorney's fees for the supposed legal services he rendered to petitioners herein who were the plaintiffs in Civil Case No. Q--11180 entitled "Pilar Ibanez Vda. de Zuzuarregui, et al. v. Constitution Hills Development Corporation, et al." for quieting of title thru cancellation of falsified and derivative titles with damages.

On February 19, 1988, the petitioners filed a motion to dismiss the latter complaint on the following grounds: (1) that the complaint does not state a cause of action; (2) that the filing of the present complaint violates the rule on splitting of a cause of action; and (3) that the present action is barred by the pendency of another action between the parties for the same cause of action.

On May 11, 1988, the trial court issued an order denying said motion to dismiss, the pertinent portion of which reads:

"Although joinder of causes of action in one complaint, if permissible, should be encouraged, for it promotes the policy on avoiding multiplicity of suits, plaintiff, however, is not obligated to do so and he could always file separate actions for each cause of action. Subject to the exceptions enumerated in Section 5 of Rule 2 of the Revised Rules of Court, where a plaintiff has several causes of action against the same defendant, he may join them all in a single complaint. However, the joinder of causes of action is not compulsory, but merely permissive. (Moran, Rules of Court, Vol. I, 1979 Ed., p. 143; Regalado, Remedial Law Compendium, Vol. I, 4th Rev. Ed., p. 43).

xxx xxx xxx

“In (sic) relief prayed for in the case at bar and the relief prayed for in Civil Case No. Q-39001 are founded on entirely different facts. The attorney's fees which plaintiff seeks to recover from the defendants in the present case are for the legal services the former rendered to the latter in Special Civil Case No. 26804, an expropriation proceeding instituted by the National Housing Authority over the properties of said defendants in Antipolo, Rizal. The relief prayed for is based on the alleged breach by the defendants of their written commitment to the plaintiff to retain his professional services until the final determination of the expropriation case; however, without justifiable cause they terminated his professional services (sic) the expropriation case has been finally determined.

"On the other hand, the attorney's fees sought by the plaintiff in Civil Case No. 39001 are for the legal services he rendered to the defendants as plaintiffs in Civil Case No. Q-11180 to quiet their title over Lots Nos. 827 and 830 situated in Quezon City, and to cancel the falsified and derivative titles secured by other persons over those lots, with damages. The relief prayed for in that case was based on quantum meruit.

"The pendency, therefore, of Civil Case No. 39001 before the Regional Trial Court of Quezon City will not lie to sustain the dismissal of the present action." (Rollo, pp. 133-134).

A motion for reconsideration of this order filed by the petitioners was likewise denied on May 31, 1988.

On June 13, 1988, the petitioners filed in the Court of Appeals a special civil action for certiorari to annul the orders of May 11, 1988 and May 31, 1988 of the respondent Judge with a prayer for the issuance of a temporary restraining order to enjoin the respondent Judge from enforcing the questioned orders.

On August 29, 1988, the Court of Appeals, holding that the trial court correctly denied petitioners' motion to dismiss the complaint, rendered its decision dismissing the petition for certiorari filed by the petitioners. Their motion for reconsideration was also denied.

Hence, this petition.

On June 5, 1989, the Court gave due course to the petition and required the parties to submit simultaneously their respective memoranda within thirty (30) days from notice (Rollo, p. 189). The petitioners submitted their memorandum on July 22, 1989 (Rollo, p. 192), while the private respondent submitted his on July 31, 1989 (Rollo, p. 218).

The petition is devoid of merit.

The private respondent asserts that the order of the respondent Judge denying petitioners' motion to dismiss is an interlocutory order. Pursuant to Section 2 of Rule 41 of the Rules of Court, when a motion to dismiss is denied, the proper procedure to be followed by the dissatisfied movant is not to appeal from the order of denial but to answer the complaint and go to trial until final judgment is rendered. The only exception to this general rule is when the trial court has no jurisdiction over the case or committed grave abuse of discretion in denying the motion to dismiss. The trial court in this case did not commit grave abuse of discretion. Neither did the Court of Appeals act capriciously or whimsically in sustaining the order of denial of the motion to dismiss. We agree.

The general rule is that an order denying a motion to dismiss is interlocutory and cannot be the subject of a petition for certiorari (*Leynes v. Sandiganbayan and the Republic of the Philippines*, G.R. No. 86392, January 19, 1989, En Banc, Minute Resolution). The records show that both the trial court and the appellate court were in accord with the facts and the law when they denied the motion to dismiss. Hence, there was no grave abuse of discretion committed.

More importantly, in a recent case of *Tugade v. Court of Appeals, et al.*, G.R. No. 86022, February 27, 1989, First Division, Minute Resolution, which in effect is a reiteration of consistent rulings of this Court, it was held that:

"The Court of Appeals properly dismissed said petition, not only for laches, but also because, as a general rule, the denial of a motion to dismiss, which is an interlocutory order, is not reviewable by certiorari (*Prudential Bank & Trust Co. v. Macadaeg, et al.*, 105 Phil. 791; *Sapul vs. Siva*, 106 Phil. 73; *Phil. International Fair, Inc. vs. Ibanez*, 94 Phil. 424). Petitioner's remedy is to reiterate the grounds of his motion to dismiss, as defenses in his answer to the complaint, proceed to trial, and, in case of an adverse decision, appeal the decision in due time (*Harrison Foundry Machinery Co. vs. Harrison Foundry Workers' Association*, 8 SCRA 430). The existence of that adequate remedy removed the underpinnings of his petition for certiorari in the Court of Appeals (Sec. 1, Rule 65, Rules of Court). The appellate court did not err in dismissing the petition."

PREMISES CONSIDERED, the petition is hereby DISMISSED for lack of merit and the assailed decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* CA, Special Fifteenth Division, penned by Associate Justice Regina G. Ordonez-Benitez with the concurrence of Associate Justices Josue N. Bellosillo and Felipe B. Kalalo.

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