

## THIRD DIVISION

[ G.R. No. 180203, June 28, 2021 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. ROMEO B. DARADAR, RESPONDENT.**

### D E C I S I O N

**HERNANDO, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> challenging the June 8, 2007 Decision<sup>[2]</sup> and September 19, 2007 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 71029 which reinstated the complaint filed in Civil Case No. 25981, an action for nullity of notarial rescission of a Deed of Sale, and directed the court a quo to conduct further proceedings.

#### **Antecedent Facts:**

Petitioner Philippine National Bank (PNB) and respondent Romeo B. Daradar (Daradar) entered into a Deed of *Promise to Sell* (Deed) covering two parcels of land and improvements therein that were owned by PNB. Due to Daradar's failure to pay the yearly amortizations and interest due under the Deed, PNB rescinded the Deed through a *Notarial Notice of Rescission* dated November 27, 1989.<sup>[4]</sup>

Thus, Daradar filed an action for Annulment of Rescission, Accounting and Damages against PNB in the Regional Trial Court of Iloilo City (RTC) to annul the notarial rescission of the Deed. The case was docketed as **Civil Case No. 21375** and was raffled to **Branch 24** of said court.<sup>[5]</sup>

Due to respondent's failure to appear at the scheduled hearing, the RTC, in an April 5, 1995 Order (First Order) provisionally dismissed Civil Case No. 21375 without prejudice.<sup>[6]</sup> No motion for reconsideration was filed against the said Order.

After the lapse of four years, the RTC *motu proprio* issued its June 17, 1999 Order (Second Order) finally dismissing Civil Case No. 21375 on the ground of respondent's failure to prosecute the case under Section 3, Rule 17 of the Rules of Court, in view of respondent's failure to reinstate or revive the case despite the lapse of more than four years from the first dismissal.<sup>[7]</sup>

On October 18, 1999, Daradar filed another complaint for declaration of nullity of notarial rescission of the Deed with the RTC. The case was docketed as **Civil Case No. 25981** and raffled to **Branch 22**.<sup>[8]</sup> Summons was properly served upon PNB, who thereafter moved to dismiss the complaint on the ground that the second order of dismissal which dismissed Civil No. 21375 for failure of respondent to prosecute was an adjudication on the merits, thereby barring the subsequent filing of Civil Case No. 25981 on the ground of *res judicata*.<sup>[9]</sup>

## **Ruling of the Regional Trial Court:**

In its January 27, 2000 Order,<sup>[10]</sup> the RTC granted the motion to dismiss on the ground of *res judicata*. In so ruling, the RTC opined that the previous dismissal of Civil Case No. 21375 involving the same parties, the same cause of action and the same subject matter had the effect of adjudication upon the merits pursuant to Section 3, Rule 17 of the Rules of Civil Procedure, without prejudice to PNB's counterclaim in the same action.

The *fallo* of the RTC's January 27, 2000 Order reads:

**WHEREFORE**, in view of the foregoing, the Complaint is hereby ordered **DISMISSED**. No pronouncement as to costs.

**IT IS SO ORDERED.**<sup>[11]</sup>

Respondent moved for reconsideration, but the RTC denied the same in its March 14, 2000 Order.<sup>[12]</sup>

Thus, respondent appealed the same before the CA on the ground that Civil Case No. 21375 was dismissed without prejudice and is thus not a bar to the filing of Civil Case No. 25981, and in the alternative, that petitioner's failure to prosecute its compulsory counterclaim for ejectment should also be barred.<sup>[13]</sup>

## **Ruling of the Court of Appeals:**

The appellate court granted Daradar's Petition in its now assailed June 8, 2007 Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the appeal filed in this case, **SETTING ASIDE** the order dated January 27, 2000 issued by the RTC, Branch 22 in Iloilo City in Civil Case No. 25981 and **REINSTATING** the complaint filed in said case.

Accordingly, we hereby direct the court a quo to conduct further proper proceedings in Civil Case No. 25981.

SO ORDERED.<sup>[14]</sup>

In so ruling, the appellate court opined that the First Order dismissing Civil Case No. 21375 operated to divest the trial court of jurisdiction over the case; thus, the Second Order issued by the trial court four years later, which purportedly dismissed Civil Case No. 21375 with prejudice, is null and void for lack of jurisdiction.

Hence, the CA ruled that the Second Order did not bind respondent or produce the effect of an adjudication upon the merits of the case that would bar Daradar from reviving the same action by filing another complaint.<sup>[15]</sup>

PNB moved for reconsideration, which was denied by the appellate court in its September 19, 2007 Resolution. <sup>[16]</sup>

Hence, this Petition.

### **Issue**

PNB contends that the court *a quo* erred in reinstating the complaint in Civil Case No. 25981, as the First Order provisionally dismissing Civil Case No. 21375 without prejudice was merely interlocutory and not a final order that terminated the proceedings, and the Second Order finally dismissing the case for respondent's failure to prosecute superseded the First Order and had the effect of an adjudication on the merits which barred Daradar from reviving the case.

PNB also asserts that the trial court erred in declaring that the Second Order was null and void since the same had already become final and immutable. Thus, petitioner prays for the reinstatement of the trial court's January 27, 2000 Order in Civil Case No. 25981, which granted PNB's motion to dismiss on the ground of *res judicata*.<sup>[17]</sup>

On the other hand, Daradar maintains that the First Order did not bar the filing of Civil Case No. 25981 as the First Order was a dismissal without prejudice, and the Second Order is null and void for want of jurisdiction.<sup>[18]</sup>

Thus, the sole issue for resolution is whether the appellate court erred in reinstating the complaint in Civil Case No. 21375 on the ground that the same is not barred by *res judicata*.

### **Our Ruling**

The Petition is granted.

**The First Order provisionally dismissing Civil Case No. 21375 is void for lack of legal basis.**

The Court of Appeals erred when it reinstated the complaint in Civil Case No. 25981 on the basis of the First Order, which provisionally dismissed Civil Case No. 21375 without prejudice and which purportedly operated to divest the trial court over its jurisdiction on the case.

In the first place, the concept of a provisional dismissal in our jurisdiction contemplates the temporary dismissal of a *criminal* action that may be revived within the period set by the Rules of Court upon compliance with certain requisites. <sup>[19]</sup> There is nothing in the Rules of Civil Procedure, as amended, which provides for a provisional dismissal of a civil case.

Moreover, a judgment must be definitive; the decision itself must purport to decide finally the rights of the parties upon the issue submitted by specifically denying or

granting the remedy sought by the action.<sup>[20]</sup> It is significant to note that in *Cu Unjieng E. Hijos v. Mabalacat Sugar Company*,<sup>[21]</sup> (*Cu Unjieng*) the Court held that when a definitive judgment cannot be rendered since the judgment is subject to a contingency, the judgment contains no disposition at all and is null and void. Similarly, we find that the provisional dismissal before Us fails to meet this standard of definitiveness discussed in *Cu Unjieng* and hence should not be sanctioned.

Guided by the foregoing, the Court is convinced that the First Order which provisionally dismissed Civil Case No. 21375 is void and without legal effect for lack of basis.

A void judgment or order has no legal and binding effect for any purpose. In contemplation of law, it is non-existent and may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored. All acts performed pursuant to it and all claims emanating from it have no legal effect. In this sense, a void order can never attain finality.<sup>[22]</sup> Being void, the issuance of the First Order never became final nor operated to divest the trial court of jurisdiction over the complaint.

Nevertheless, while the present Rules of Civil Procedure do not provide for provisional dismissals, this Court in a 1940 case equated a provisional order with an interlocutory order that was subject to vacation or amendment at any time before final judgment is rendered or has become executory.<sup>[23]</sup> It is settled that an order is considered interlocutory when it does not completely dispose of the case because it leaves something to be done by the trial court with respect to the merits, and "refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy."<sup>[24]</sup> An interlocutory order is always under the control of the court until the final decision of the suit, and may be modified or rescinded upon sufficient grounds shown at any time before final judgment.<sup>[25]</sup>

Here, the First Order which provisionally dismissed the case is interlocutory because it did not completely dispose of the case and did not decide with finality the rights and obligations of the parties. Hence, even assuming *arguendo* that provisional dismissals of civil cases such as the First Order could be sanctioned, the First Order should be considered interlocutory and could not have operated to divest the trial court of jurisdiction. The trial court accordingly acted within its jurisdiction in issuing its Second Order and in *motu proprio* dismissing the case for respondent's failure to prosecute under Rule 17, Section 3 of the Rules of Civil Procedure.

**The Second Order already attained finality and is beyond the courts' power to amend or revoke.**

In its Second Order, the trial court dismissed Civil Case No. 21375 for respondent's failure to prosecute his action. Dismissal of an action due to a plaintiffs failure to prosecute is governed by Rule 17, Section 3 of the Rules of Court, which provides: