

SECOND DIVISION

[G.R. No. 205753, July 04, 2016]

ROSA PAMARAN, SUBSTITUTED BY HER HEIRS, THROUGH THEIR REPRESENTATIVE, ROSEMARY P. BERNABE, PETITIONERS, VS. BANK OF COMMERCE, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari* assails the December 10, 2012 and February 4, 2013 Orders^[1] of the Regional Trial Court of Olongapo City, Branch 75 (RTC Olongapo) granting the motion to dismiss by way of affirmative defenses and accordingly dismissing the Complaint^[2] in Civil Case No. 29-0-2012 for "Damages and Restitution of Value of a Residential House Unlawfully Taken."

Factual Antecedents

In the Complaint dated February 27, 2012, Rosa Pamaran (Rosa) alleged that her children, Rhodora Pamaran (Rhodora), and spouses Rosemary P. Bernabe (Rosemary) and Leonardo W. Bernabe (spouses Bernabe), owned adjacent lots respectively covered by (a) Transfer Certificate of Title No. (TCT) 213130, and (b) TCT No. 124149. These lots correspondingly covered 341 and 366 square meters and are located at Dona Rosario Bayview Subdivision, Sucat, Muntinlupa City. Purportedly, in 1987, Rosa built her residential house on these lots with the consent of Rhodora and spouses Bernabe.

Sometime in 1997 and 1998, Southmarine International Ltd. Co. (Southmarine) obtained loans from the Bank of Commerce (Bankcom). To secure these loans, Rhodora and spouses Bernabe constituted real estate mortgages (REM) on their lots. Rosa claimed that Bankcom neither included her house in determining the loan amount nor obtained her consent to the REM. She added that Bankcom was aware of the existence of her house on these lots.

Rosa asserted that eventually, these lots were foreclosed and their ownership was consolidated in favor of Bankcom. Later, Bankcom filed petitions for issuance of writs of possession, which were granted^[3] by the RTC of Muntinlupa City, Branch 206 (RTC Muntinlupa) on November 22, 2011 and December 21, 2011.

Rosa averred that because of these writs, she was dispossessed of her house in February 2012. Thus, she prayed that Bankcom be ordered to pay her damages amounting to P3 million for the value of her house, P300,000.00 for its violation of her right to due process and equal protection of law, and P100,000.00 for attorney's fees.

Bankcom, on its end, raised in its Answer^[4] with Compulsory Counterclaim the

following affirmative defenses: 1) Rosa has no cause of action against it; 2) the Complaint is a collateral attack on its title and an interference with the jurisdiction of the RTC Muntinlupa; 3) Rosa was not deprived of due process; and, 4) the venue was improperly laid.

Bankcom contended that Rosa has no cause of action because she is not the owner of the subject lots as well as the improvement thereon; and she was never a party to any contract between Bankcom, and its mortgagors, Rhodora and spouses Bernabe. It also argued that this Complaint is a collateral attack on its title because the REM and the Certificate of Sale indicated that they covered not only the subject lots, but including the improvement thereon.

In addition, Bankcom insisted that the Complaint interfered with the jurisdiction of RTC Muntinlupa, which already granted in its favor writs of possession over the properties. It argued that while the Complaint is captioned as one for "Damages and Restitution of Value of Residential House Unlawfully Taken," the same is a real action because it concerns Rosa's claim of ownership over the subject house. It posited that the Complaint should have been filed before the RTC Muntinlupa where such property is located.

In her Reply^[5] with Answer to Counterclaim and Comment^[6] to Bankcom's Affirmative Defenses, Rosa argued that she did not authorize her children to encumber her house. She also stated that the REM was a contract of adhesion, thus, its stipulation that "the mortgage included all the buildings and improvements [on the land]" pertained to improvements belonging to the mortgagors, not to third persons.

Moreover, Rosa clarified that she does not question the writs of possession issued by the RTC Muntinlupa. She, nonetheless, claimed that her Complaint concerns Bankcom's use of these writs to deprive her of her house. On this, she declared that this is not a collateral attack on Bankcom's title but a direct attack on its abuse of her right to due process by arrogating to itself her house, which was not part of the REM.

Finally, Rosa contended that this a personal action because while she cited real properties situated in Muntinlupa City, she is not asking to be the owner or possessor thereof but is merely praying that Bankcom be ordered to pay her damages corresponding to the value of her house. She likewise affirmed that the venue is proper since she resides in Olongapo City.

Because of Rosa's demise on September 10, 2012, her heirs^[7] (petitioners) substituted^[8] her, designating Rosemary as their representative in this case.

On December 10, 2012, the RTC Olongapo issued the first assailed Order granting Bankcom's motion to dismiss and accordingly, dismissing the Complaint.

Thereafter, petitioners filed a Motion for Reconsideration, which was denied by the RTC Olongapo in the second assailed Order dated On February 4, 2013.

Issues

Hence, petitioners filed this Petition raising the following issues:

- a) Whether x x x the court *a quo* erred in resolving the issue of lack of cause of action on the basis of evidence *aliunde* put forth before it by the movant and not solely on the basis of the complaint.
- b) Whether x x x the court *a quo* erred in disregarding the jurisprudential rule that a movant to dismiss on the ground of lack of cause of action is deemed to have hypothetically admitted plaintiff's factual representation in the complaint.
- c) Whether x x x the court *a quo* committed error in procedure when it resolved a question of fact in favor of [Bankcom] without first giving [petitioners the opportunity to present evidence on a controversial fact, and used such conclusion of fact to justify the dismissal of a complaint on the ground of lack of cause of action.
- d) Whether x x x the court *a quo* erred in justifying its dismissal of [petitioners' complaint on a thesis that its initiation interfered with the exercise of jurisdiction of a co-equal court in *[e]xparte* proceedings for the issuance of writ of possession under Act 3135.^[9]

Petitioners 'Arguments

Petitioners state that in resolving Bankcom's motion to dismiss (by way of affirmative defenses) on the ground of lack of cause of action, the RTC Olongapo should have exclusively considered the averments in the Complaint, which are deemed hypothetically admitted. They added that RTC Olongapo's inquiry is limited to the determination of whether these allegations present a case on which the relief may be granted.

Petitioners insist that the Complaint states a cause of action, which relates to Bankcom's purported unlawful taking of the house of the late Rosa; and such cause of action entitles petitioners to recover damages corresponding to the value thereof. They submit that the RTC Olongapo's conclusion that the REM included the lots and the improvement thereon, without giving Rosa the opportunity to prove the allegations in the Complaint is a procedural error tantamount to denial of due process.

Finally, petitioners declare that the RTC Olongapo further justified the dismissal of the Complaint on the ground that the Complaint interfered with the jurisdiction of the RTC Muntinlupa. They stress that the petition for issuance of writ of possession filed with the RTC Muntinlupa and the instant Complaint for damages are different actions and the reliefs sought for in them differ from the other.

Respondent's Arguments

For its part, Bankcom states that the RTC Olongapo properly dismissed the Complaint on the ground of lack of cause of action. It reiterates that Rosa was never

privity to any contract between Bankcom and its mortgagors. It also avers that the Complaint is a collateral attack on its title because if the value of the house is restituted to petitioners, such grant would diminish its title over the properties subject of the writs of possession issued by the RTC Muntinlupa.

At the same time, Bankcom alleges that the RTC Olongapo correctly dismissed the complaint on the ground of improper venue. It maintains that while the Complaint was denominated as one for damages and restitution of value of a house unlawfully taken, the action is, in fact, a real action because it is based on Rosa's claim of ownership over the house built on the subject lots.

Our Ruling

The Court grants the Petition.

Petitioners come directly before the Court, on pure questions of law, essentially raising the issue of whether the RTC Olongapo erred in dismissing the Complaint, without trial, and only upon motion to dismiss by way of affirmative defenses raised in Bankcom's Answer.

A cause of action is an act or omission by which a person violates the right of another. Its essential elements are; (1) plaintiff's right, which arises from or is created by whatever means, and is covered by whatever law; (2) defendant's obligation not to violate such right; and, (3) defendant's act or omission in violation of the such right and for which plaintiff's may seek relief from defendant.^[10]

When an action is filed, the defendant may, nevertheless, raise the issue of want of cause of action through a proper motion to dismiss. Thus, a distinction must be made between a motion to dismiss for failure to state a cause of action under Section 1(g)^[11] of Rule 16, and the one under Rule 33^[12] of the Rules of Court.^[13]

In the first situation, the motion must be made before a responsive pleading is filed; and it can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, in the second instance, the motion to dismiss must be filed after the plaintiff rested his case; and it can be determined only on the basis of the evidence adduced by the plaintiff. In the first case, it is immaterial if the allegations in the complaint are true or false; however, in the second situation, the judge must determine the truth or falsity of the allegations based on the evidence presented.^[14]

Stated differently, a motion to dismiss under Section 1(g) of Rule 16 is based on preliminary objections made before the trial while the motion to dismiss under Rule 33 is a demurrer to evidence on the ground of insufficiency of evidence, and is made only after the plaintiff rested his case.^[15]

Here, Bankcom submitted its motion to dismiss by way of affirmative defenses. Clearly, there had been no presentation of evidence made and Rosa had not yet rested her case. As Bankcom's motion was made before trial then, it falls within the first instance above-discussed.

Moreover, Bankcom's motion to dismiss must be resolved with reference to the

allegations in the Complaint assuming them to be true. The RTC Olongapo does not need to inquire on the truthfulness of these allegations and declare them to be false. If it does, such court would be denying the plaintiff (Rosa) of her right to due process of law. In other words, in determining whether a complaint states or does not state a cause of action, the court must hypothetically admit the truth of the allegations and determine if it may grant the relief prayed for based on them. The court cannot consider external factors in determining the presence or the absence of a cause, of action other than the allegations in the complaint.^[16]

Here, the pertinent portions of the Complaint read:

3. The instant suit is a **personal action for the recovery of damages** by the plaintiff (*Rosa*) from the defendant (*Bankcom*) occasioned by defendant's reckless **violation of the constitutional right of the former not to be deprived of her property without due process of law**. The instant suit is authorized under Article 32 of the Civil Code x x x

x x x x

6. The **plaintiff is the owner of a residential house** that she ha[d] constructed in 1987, which x x x has a current market value of at least Php3,000,000.00 constructed on 2 residential lots covered by TCT No. 213130 x x x in the name of Rliodora Pamaran, x x x and TCT No. 124149 x x x in the name of Spouses Rosemary P. Bernabe and, Leonardo W. Bernabe x x x Both residential lots are located at Dona Rosario Bayview Subd., Sucat, Muntinlupa City. The plaintiff had the residential house constructed xxx with the express consent of the lot owners, Rhodora Pamaran and the spouses Rosemary and Leonardo Bernabe; who are her children. The residential house is currently declared for taxation purposes in the name of the plaintiff x x x

7. Sometime in 1997 and 1998, xxx Southmarine International Ltd. Co, x x x obtained loans from defendant bank. [T]o secure the said loans, **Rhodora Pamaran and Spouses Rosemary and Leonardo Bernabe constituted real estate mortgages on the residential lots only**.

8. The defendant bank was aware of the existence of [plaintiffs] residential house x x x **[P]laintiff never executed a real estate mortgage over her residential house in favor of the defendant** x x x

9. [Later], **the defendant bank foreclosed on the collateralized residential lots pursuant to the real estate mortgages** x x x [I]n 1999, the ownership of the residential lots was consolidated in favor of the defendants x x x

10. After more than 10 years from the foreclosure sale x x x, the defendant initiated ex-parte petitions for issuance of writs of possession over the 2 residential lots xxx [T]he RTC of Muntinlupa City xxx issued the writs of possession xxx without any notice to the plaintiff whose residential house would be necessarily affected.