

## SECOND DIVISION

[ G.R. No. 200191, August 20, 2014 ]

**LOURDES C. FERNANDEZ, PETITIONER, VS. NORMA VILLEGAS  
AND ANY PERSON ACTING IN HER BEHALF INCLUDING HER  
FAMILY, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Resolutions dated June 22, 2011<sup>[2]</sup> and December 28, 2011<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 116143 which dismissed the petition for review under Rule 42 of the Rules of Court<sup>[4]</sup> (CA petition) due to defective verification and certification against forum shopping.

#### The Facts

On August 21, 2008, petitioner Lourdes C. Fernandez (Lourdes) and her sister, Cecilia Siapno (Cecilia), represented by her attorney-in-fact, Imelda S. Slater (Imelda), filed a Complaint for Ejectment<sup>[5]</sup> before the Municipal Trial Court in Cities, Branch 1, Dagupan City (MTCC), docketed as Civil Case No. 15980, against respondent Norma Villegas (Norma) and any person acting in her behalf including her family (respondents), seeking to recover possession of a parcel of land situated in Guilig Street, Dagupan City covered by Transfer Certificate of Title (TCT) No. 19170<sup>[6]</sup> (subject property).

In their complaint, Lourdes and Cecilia (plaintiffs) averred that they are the registered owners of the subject property on which both Lourdes and respondents previously lived under one roof. However, when their house was destroyed by typhoon "Cosme," Lourdes transferred to a *nipa* hut on the same lot, while Norma, Cecilia's daughter-in-law, and her family were advised to relocate but, in the meantime, allowed to use a portion thereof.<sup>[7]</sup> Instead, respondents erected a house thereon over plaintiffs' objections and, despite demands, refused to vacate and surrender possession of the subject property.<sup>[8]</sup> The dispute was referred to the Barangay Office of Pugo<sup>[9]</sup> Chico and the Public Attorney's Office, both of Dagupan City, but no settlement was reached. <sup>[10]</sup>

For their part, respondents, in their Answer,<sup>[11]</sup> averred that the complaint stated no cause of action, considering that Lourdes has no standing to question their possession of the subject property as she had already donated her portion in favor of Cecilia,<sup>[12]</sup> adding too that the latter is bound by her declaration that "the house and lot belong[s] to Eddie," who is Norma's late husband.<sup>[13]</sup> Respondents further asserted that there was no compliance with the required conciliation and mediation

under the Katarungang Pambarangay Law<sup>[14]</sup> as no Certificate to File Action was attached to the complaint,<sup>[15]</sup> thereby rendering the complaint dismissible.

### **The MTCC Ruling**

In a Decision<sup>[16]</sup> dated September 30, 2009, the MTCC found that respondents failed to impugn the validity of plaintiffs' ownership over the subject property. As owners, plaintiffs therefore have the right to enjoy the use and receive the fruits from the said property, as well as to exclude one from its enjoyment pursuant to Articles 428 and 429 of the Civil Code.<sup>[17]</sup> Accordingly, the MTCC ordered respondents to: (a) vacate the subject property and pay plaintiffs the amount of P1,000.00 per month as reasonable compensation for the use and occupation of the portion of the lot occupied by them, reckoned from the filing of the complaint; (b) pay plaintiffs P10,000.00 as attorney's fees; and (c) pay the cost of suit.<sup>[18]</sup>

Dissatisfied with the MTCC's ruling, respondents filed an appeal<sup>[19]</sup> before the Regional Trial Court of Dagupan City (RTC), Branch 40, docketed as Civil Case No. 2009-0224-D.

### **The RTC Ruling**

In a Decision<sup>[20]</sup> dated March 16, 2010, the RTC, Branch 40 granted respondents' appeal and ordered the dismissal of plaintiffs' complaint based on the following grounds: (a) there was no substantial compliance with the mandatory conciliation and mediation process before the barangay, especially considering that the parties are very close relatives;<sup>[21]</sup> and (b) respondents are builders in good faith and cannot be summarily ejected from the subject property without compliance with the provisions of Articles 448, 546, and 548 of the Civil Code.<sup>[22]</sup>

The RTC, Branch 40 further ordered plaintiffs to jointly and severally pay respondents the amount of P50,000.00 as attorney's fees.<sup>[23]</sup>

Aggrieved, plaintiffs filed a motion for reconsideration<sup>[24]</sup> which was denied by the RTC, Branch 44<sup>[25]</sup> in a Resolution<sup>[26]</sup> dated August 18, 2010, prompting the filing of the CA petition.

### **The CA Proceedings**

In response to plaintiffs' CA petition, respondents filed a Motion to Dismiss Appeal on the grounds that: (a) Cecilia failed to personally verify the petition; and (b) the appeal is dilatory.<sup>[27]</sup>

In their comment, plaintiffs maintained that Lourdes, as co-owner of the subject property, has the right to file an ejectment case by herself, without joining her co-owner, Cecilia, as provided under Article 487 of the Civil Code. Moreover, Lourdes was specially authorized by Imelda to file the CA petition.<sup>[28]</sup>

In a Resolution<sup>[29]</sup> dated June 22, 2011, the CA granted respondents' Motion to Dismiss Appeal, holding that the verification and certification<sup>[30]</sup> against forum

shopping attached to the CA petition was defective since it was signed only by Lourdes, one of the plaintiffs in the case, in violation of Section 5,<sup>[31]</sup> Rule 7 of the Rules of Court which requires all the plaintiffs to sign the same.<sup>[32]</sup> There was also no showing that Lourdes was authorized by her co-plaintiff, Cecilia, to represent the latter and to sign the said certification, and neither did the submission of the special powers of attorney of Cecilia and Imelda to that effect constitute substantial compliance with the rules.<sup>[33]</sup> The CA further noted that plaintiffs failed to comply with its prior Resolution dated October 11, 2010 requiring the submission of an amended verification/certification against forum shopping within five (5) days from notice, warranting the dismissal of the CA petition on this score.<sup>[34]</sup>

At odds with the CA's resolution, plaintiffs sought reconsideration<sup>[35]</sup> but the same was denied in a Resolution<sup>[36]</sup> dated December 28, 2011, hence, the instant petition filed by Lourdes alone.

### **The Issue Before the Court**

The primordial issue in this case is whether or not the CA erred in dismissing outright the CA petition due to a defective verification and certification against forum shopping attached to the CA petition.

### **The Court's Ruling**

The present petition has merit.

The Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification and certification against forum shopping, viz.:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

**3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of

“special circumstances or compelling reasons.”

**5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.**

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.<sup>[37]</sup> (Emphases supplied)

Applying these guidelines to the case at bar, particularly, those stated in paragraphs 3 and 5 highlighted above, the Court finds that the CA committed reversible error in dismissing the CA petition due to a defective verification and certification against forum shopping.

#### **A. Substantial Compliance with the Verification Requirement.**

It is undisputed that Lourdes is not only a resident of the subject property but is a co-owner thereof together with her co-plaintiff/sister, Cecilia. As such, she is “one who has ample knowledge to swear to the truth of the allegations in the x x x [CA] petition” and is therefore qualified to “sign x x x the verification” attached thereto in view of paragraph 3 of the above-said guidelines.

In fact, Article 487 of the Civil Code explicitly provides that any of the co-owners may bring an action for ejectment, without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all.<sup>[38]</sup> To reiterate, both Lourdes and Cecilia are co-plaintiffs in the ejectment suit. Thus, they share a commonality of interest and cause of action as against respondents. Notably, even the petition for review filed before the CA indicated that they are the petitioners therein and that the same was filed on their behalf. **Hence, the lone signature of Lourdes on the verification attached to the CA petition constituted substantial compliance with the rules.**<sup>[39]</sup> As held in the case of *Medado v. Heirs of the Late Antonio Consing*:<sup>[40]</sup>

[W]here the petitioners are immediate relatives, who share a **common interest** in the property subject of the action, **the fact that only one of the petitioners executed the verification or certification of forum shopping will not deter the court from proceeding with the action.**

<sup>[41]</sup> (Emphases and underscoring supplied)

Besides, it is settled that the verification of a pleading is only a formal, not a