

SECOND DIVISION

[G.R. No. 174356, January 20, 2010]

**EVELINA G. CHAVEZ AND AIDA CHAVEZ-DELES, PETITIONERS,
VS. COURT OF APPEALS AND ATTY. FIDELA Y. VARGAS,
RESPONDENTS.**

D E C I S I O N

ABAD, J.:

This case is about the propriety of the Court of Appeals (CA), which hears the case on appeal, placing the property in dispute under receivership upon a claim that the defendant has been remiss in making an accounting to the plaintiff of the fruits of such property.

The Facts and the Case

Respondent Fidela Y. Vargas owned a five-hectare mixed coconut land and rice fields in Sorsogon. Petitioner Evelina G. Chavez had been staying in a remote portion of the land with her family, planting coconut seedlings on the land and supervising the harvest of coconut and *palay*. Fidela and Evelina agreed to divide the gross sales of all products from the land between themselves. Since Fidela was busy with her law practice, Evelina undertook to hold in trust for Fidela her half of the profits.

But Fidela claimed that Evelina had failed to remit her share of the profits and, despite demand to turn over the administration of the property to Fidela, had refused to do so. Consequently, Fidela filed a complaint against Evelina and her daughter, Aida C. Deles, who was assisting her mother, for recovery of possession, rent, and damages with prayer for the immediate appointment of a receiver before the Regional Trial Court (RTC) of Bulan, Sorsogon.^[1] In their answer, Evelina and Aida claimed that the RTC did not have jurisdiction over the subject matter of the case since it actually involved an agrarian dispute.

After hearing, the RTC dismissed the complaint for lack of jurisdiction based on Fidela's admission that Evelina and Aida were tenants who helped plant coconut seedlings on the land and supervised the harvest of coconut and *palay*. As tenants, the defendants also shared in the gross sales of the harvest. The court threw out Fidela's claim that, since Evelina and her family received the land already planted with fruit-bearing trees, they could not be regarded as tenants. Cultivation, said the court, included the tending and caring of the trees. The court also regarded as relevant Fidela's pending application for a five-hectare retention and Evelina's pending protest relative to her three-hectare beneficiary share.^[2]

Dissatisfied, Fidela appealed to the CA. She also filed with that court a motion for the appointment of a receiver. On April 12, 2006 the CA granted the motion and ordained receivership of the land, noting that there appeared to be a need to

preserve the property and its fruits in light of Fidela's allegation that Evelina and Aida failed to account for her share of such fruits.^[3]

Parenthetically, Fidela also filed three estafa cases with the RTC of Olongapo City and a complaint for dispossession with the Department of Agrarian Reform Adjudication Board (DARAB) against Evelina and Aida. In all these cases, Fidela asked for the immediate appointment of a receiver for the property.

The Issues Presented

Petitioners present the following issues:

1. Whether or not respondent Fidela is guilty of forum shopping considering that she had earlier filed identical applications for receivership over the subject properties in the criminal cases she filed with the RTC of Olongapo City against petitioners Evelina and Aida and in the administrative case that she filed against them before the DARAB; and
2. Whether or not the CA erred in granting respondent Fidela's application for receivership.

The Court's Ruling

One. By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, trusting that one or the other tribunal would favorably dispose of the matter.^[4] The elements of forum shopping are the same as in *litis pendentia* where the final judgment in one case will amount to *res judicata* in the other. The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.^[5]

Here, however, the various suits Fidela initiated against Evelina and Aida involved different causes of action and sought different reliefs. The present civil action that she filed with the RTC sought to recover possession of the property based on Evelina and Aida's failure to account for its fruits. The estafa cases she filed with the RTC accused the two of misappropriating and converting her share in the harvests for their own benefit. Her complaint for dispossession under Republic Act 8048 with the DARAB sought to dispossess the two for allegedly cutting coconut trees without the prior authority of Fidela or of the Philippine Coconut Authority.

The above cases are similar only in that they involved the same parties and Fidela sought the placing of the properties under receivership in all of them. But receivership is not an action. It is but an auxiliary remedy, a mere incident of the suit to help achieve its purpose. Consequently, it cannot be said that the grant of receivership in one case will amount to *res judicata* on the merits of the other cases.