

SECOND DIVISION

[G.R. No. 173292, September 01, 2010]

**MEMORACION Z. CRUZ, REPRESENTED BY EDGARDO Z. CRUZ,
PETITIONER, VS. OSWALDO Z. CRUZ, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the Court of Appeals' (CA) Decision^[2] dated 20 December 2005 and Resolution dated 21 June 2006 in CA-G.R. CV No. 80355. The CA affirmed with modification the Order^[3] dated 2 June 1997 of the Regional Trial Court of the National Capital Judicial Region, Branch 30, Manila (RTC).

The Antecedent Facts

The undisputed facts, as summarized by the Court of Appeals, are as follows:

On October 18, 1993, Memoracion Z. Cruz filed with the Regional Trial Court in Manila a Complaint against her son, defendant-appellee Oswaldo Z. Cruz, for "Annulment of Sale, Reconveyance and Damages."

Memoracion claimed that during her union with her common-law husband (deceased) Architect Guido M. Cruz, she acquired a parcel of land located at Tabora corner Limay Streets, Bo. Obrero, Tondo Manila; that the said lot was registered in her name under TCT No. 63467 at the Register of Deeds of Manila; that sometime in July 1992, she discovered that the title to the said property was transferred by appellee and the latter's wife in their names in August 1991 under TCT No. 0-199377 by virtue of a Deed of Sale dated February 12, 1973; that the said deed was executed through fraud, forgery, misrepresentation and simulation, hence, null and void; that she, with the help of her husband's relatives, asked appellee to settle the problem; that despite repeated pleas and demands, appellee refused to reconvey to her the said property; that she filed a complaint against appellee before the office of the Barangay having jurisdiction over the subject property; and that since the matter was unsettled, the barangay x x x issued x x x a certification to file [an] action in court, now the subject of controversy.

After Memoracion x x x finished presenting her evidence in chief, she died on October 30, 1996. Through a Manifestation, Memoracion's counsel, Atty. Roberto T. Neri, notified the trial court on January 13, 1997 of the fact of such death, evidenced by a certificate thereof.

For his part, appellee filed a Motion to Dismiss on the grounds that (1) the plaintiff's reconveyance action is a personal action which does not survive a party's death, pursuant to Section 21, Rule 3 of the Revised Rules of Court, and (2) to allow the case to continue would result in legal absurdity whereby one heir is representing the defendant [and is a] co-plaintiff in this case.

On June 2, 1997, the trial court issued the appealed Order in a disposition that reads:

"Wherefore, in view of the foregoing, this case is ordered dismissed without prejudice to the prosecution thereof in the proper estate proceedings."

On October 17, 1997, Memoracion's son-heir, Edgardo Z. Cruz, manifested to the trial court that he is retaining the services of Atty. Neri for the plaintiff. Simultaneously, Atty. Neri filed a Motion for Reconsideration of the June 2, 1997 Order. However, the said motion was subsequently denied by Acting Presiding Judge Cielito N. Mindaro-Grulla [on October 31, 2000].

Thereafter, Edgardo Cruz, as an heir of Memoracion Cruz, filed a notice of appeal in behalf of the deceased plaintiff, signed by Atty. Neri, but the appeal was dismissed by Judge Mindaro-Grulla, [stating that] the proper remedy being certiorari under Rule 65 of the Rules of Court. On appellant's motion for reconsideration, Judge Lucia Pena Purugganan granted the same, stating that the remedy under the circumstances is ordinary appeal.^[4]

The Court of Appeals' Ruling

Petitioner Memoracion Z. Cruz, represented by Edgardo Z. Cruz, filed with the Court of Appeals a Petition for Review under Rule 45 of the 1997 Revised Rules of Civil Procedure. On 20 December 2005, the CA rendered judgment affirming with modification the RTC decision. We quote the dispositive portion of the CA's decision below.

WHEREFORE, the appealed Order is **AFFIRMED**, with **MODIFICATION**. The trial court's directive as to the prosecution of the action in the proper estate proceedings is **DELETED**.

SO ORDERED.^[5]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution of 21 June 2006.^[6]

Hence, this appeal.

The Issues

The issues for resolution in this case are:

1. Whether the Court of Appeals erred in ruling that Memoracion Z. Cruz's Petition for Annulment of Deed of Sale, Reconveyance and Damages is a purely personal action which did not survive her death; and
2. Whether the Court of Appeals erred in affirming with modification the RTC Order dismissing the Petition for Annulment of Deed of Sale, Reconveyance and Damages.

The Court's Ruling

We find the appeal meritorious.

The Petition for Annulment of Sale, Reconveyance and Damages survived the death of petitioner

The criterion for determining whether an action survives the death of a petitioner was elucidated in *Bonilla v. Barcena*,^[7] to wit:

The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.^[8]

If the case affects primarily and principally property and property rights, then it survives the death of the plaintiff or petitioner. In *Sumaljag v. Literato*,^[9] we held that a Petition for Declaration of Nullity of Deed of Sale of Real Property is one relating to property and property rights, and therefore, survives the death of the petitioner. Accordingly, the instant case for annulment of sale of real property merits survival despite the death of petitioner Memoracion Z. Cruz.

The CA erred in affirming RTC's dismissal of the Petition for Annulment of Deed of Sale, Reconveyance and Damages

When a party dies during the pendency of a case, Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure necessarily applies, viz:

Sec. 16. *Death of party; duty of counsel.* - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his