

THIRD DIVISION

[G.R. No. 182426, February 13, 2009]

ZENAIDA POLANCO, CARLOS DE JESUS, AVELINO DE JESUS, BABY DE JESUS, LUZ DE JESUS, AND DEMETRIO SANTOS, PETITIONERS, VS. CARMEN CRUZ, REPRESENTED BY HER ATTORNEY-IN-FACT, VIRGILIO CRUZ, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

This Petition for Review on *Certiorari*^[1] assails the August 28, 2007 Decision^[2] of the Court of Appeals in CA-G.R. CV No. 75079, setting aside the Order^[3] of Branch 17 of the Regional Trial Court of Malolos in Civil Case No. 542-M-2000, which dismissed respondent's Complaint^[4] for failure to prosecute. Also assailed is the March 28, 2008 Resolution^[5] denying petitioners' Motion for Reconsideration.^[6]

The facts are as follows:

Respondent Carmen Cruz, through her attorney-in-fact, Virgilio Cruz, filed a complaint for damages^[7] against petitioners for allegedly destroying her palay crops. While admitting that petitioners own the agricultural land she tilled, respondent claimed she was a lawful tenant thereof and had been in actual possession when petitioners maliciously filled so with soil and palay husk on July 1 and 2, 2000. Respondent prayed that petitioners be held liable for actual damages, moral damages, exemplary damages, litigation expenses and attorney's fees, and costs of the suit.

Petitioners filed a Motion to Dismiss,^[8] which was denied by the trial court in an Order^[9] dated December 4, 2000. It held that it has jurisdiction over the case because the allegations in the Complaint made a claim for damages, and not an agrarian dispute which should be referred to the Department of Agrarian Reform Adjudication Board (DARAB); and that the Complaint was properly filed because the Certification of Non-forum Shopping was signed by respondent's attorney-in-fact.

Petitioners simultaneously filed an Answer^[10] to the complaint and a Motion for Reconsideration^[11] of the December 4, 2000 Order. However, the court *a quo* denied the motion for lack of merit in an Order^[12] dated September 10, 2001. On January 9, 2002, the trial court issued an Order^[13] dismissing the case due to respondent's failure to prosecute.

With the denial^[14] of her Motion for Reconsideration,^[15] respondent interposed an appeal to the Court of Appeals which rendered the assailed Decision dated August 28, 2007, the dispositive portion of which states:

WHEREFORE, the appeal is hereby GRANTED. Accordingly, the Order, dated January 9, 2002, of the RTC [Branch 17, Malolos] is hereby REVERSED and SET ASIDE. Plaintiff-appellant's Complaint is hereby REINSTATED and the case is hereby REMANDED to the RTC [Branch 17, Malolos] for further proceedings.

SO ORDERED.^[16]

The Court of Appeals ruled that the trial court erred in finding that the parties failed to take necessary action regarding the case because the records plainly show that petitioners filed an Answer to the complaint, while respondent filed an Opposition to the Motion for Reconsideration with Manifestation Re: Answer of Defendants.^[17]

With regard to the order of the trial court dismissing the complaint on the ground of failure to prosecute, the appellate court held that the previous acts of respondent do not manifest lack of interest to prosecute the case; that since filing the Complaint, respondent filed an Opposition to petitioners' Motion to Dismiss, an Answer to petitioners' counterclaim, and a Comment to petitioners' Motion for Reconsideration; that respondent did not ignore petitioners' Motion to Dismiss nor did she repeatedly fail to appear before the court; that no substantial prejudice would be caused to petitioners and that strict application of the rule on dismissal is unjustified considering the absence of pattern or scheme to delay the disposition of the case on the part of respondent; and that justice would be better served if the case is remanded to the trial court for further proceedings and final disposition.

On March 28, 2008, the Court of Appeals denied petitioners' Motion for Reconsideration; hence, this petition based on the following ground:

WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IN C.A.-G.R. CV No. 75079, NULLIFYING AND/OR REVERSING AND/OR SETTING ASIDE THE ORDERS DATED JANUARY 9, 2002 AND MAY 8, 2002 ISSUED BY THE RTC-BULACAN IN CIVIL CASE No. 542-M-00, IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.

Petitioners allege that respondent failed to comply with the mandate of the 1997 Rules of Civil Procedure to promptly move for the setting of the case for pre-trial; that "heavy pressures of work" does not justify the failure to move for the setting of the case for pre-trial; that the allegations in the Complaint which pertain to respondent's status as a tenant of Elena C. De Jesus amount to forum shopping that would extremely prejudice them. Petitioners thus pray for the nullification of the Decision and Resolution of the Court of Appeals and the affirmation of the dismissal of the Complaint by the trial court.

The petition lacks merit.

The Court of Appeals correctly noted that petitioners raised the matter of respondent's alleged forum shopping for the first time only in their Motion for Reconsideration. Issues not previously ventilated cannot be raised for the first time on appeal,^[18] much less when first raised in the motion for reconsideration of a decision of the appellate court.

At any rate, this Court does not find respondent's allegations in her complaint in

Civil Case No. 542-M-00 to be constitutive of the elements of forum-shopping. Respondent merely described herself as a tenant of petitioners and mentioned that there was an unlawful detainer case^[19] involving the parcel of land which is also involved in the instant civil case for damages.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Still another test of forum-shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another – whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions), (b) rights or causes of action, and (c) reliefs sought.^[20]

Although there is an identity of some of the parties in the instant case for damages and the unlawful detainer case, there is, however, no identity of reliefs prayed for. The former is for recovery of damages allegedly caused by petitioners' acts on respondent's palay crops; while the latter case involved possessory and tenancy rights of respondent. As such, respondent did not violate the rule on forum-shopping.

Section 1, Rule 18 of the 1997 Rules of Civil Procedure imposes upon the plaintiff the duty to promptly move *ex parte* to have the case set for pre-trial after the last pleading has been served and filed. Moreover, Section 3, Rule 17^[21] provides that failure on the part of the plaintiff to comply with said duty without any justifiable cause may result to the dismissal of the complaint for failure to prosecute his action for an unreasonable length of time or failure to comply with the rules of procedure.

It must be stressed that even if the plaintiff fails to promptly move for pre-trial without any justifiable cause for such delay, the extreme sanction of dismissal of the complaint might not be warranted if no substantial prejudice would be caused to the defendant, and there are special and compelling reasons which would make the strict application of the rule clearly unjustified.^[22]

In the instant case, the Court of Appeals correctly held that the dismissal of respondent's complaint is too severe a sanction for her failure to file a motion to set the case for pre-trial. It must be pointed out that respondent prosecuted her action with utmost diligence and with reasonable dispatch since filing the complaint – she filed an opposition to petitioners' motion to dismiss the complaint; a comment to petitioners' motion for reconsideration of the December 4, 2000 Order of the trial court; and an Answer to Counterclaim of petitioners. When the trial court issued an order dismissing the case, respondent filed without delay a motion for reconsideration; and upon its denial, she immediately filed a Notice of Appeal.^[23] Moreover, contrary to petitioners' claim that respondent was silent for one year since she filed her Answer to Counterclaim until the trial court's dismissal order,^[24] records show that between said period, both parties and the trial court were threshing out petitioners' motion for reconsideration of the December 4, 2000 Order.

While "heavy pressures of work" was not considered a persuasive reason to justify