

THIRD DIVISION

[G.R. No. 166519, March 31, 2009]

**NIEVES PLASABAS AND MARCOS MALAZARTE, PETITIONERS, VS.
COURT OF APPEALS (SPECIAL FORMER NINTH DIVISION),
DOMINADOR LUMEN, AND AURORA AUNZO, RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the May 12, 2004 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 43085 and the December 1, 2004 Resolution^[2] denying reconsideration of the challenged decision.

The pertinent facts and proceedings follow.

In 1974, petitioners^[3] filed a complaint for recovery of title to property with damages before the Court of First Instance (now, Regional Trial Court [RTC]) of Maasin, Southern Leyte against respondents. The case was docketed as Civil Case No. R-1949. The property subject of the case was a parcel of coconut land in Canturing, Maasin, Southern Leyte, declared under Tax Declaration No. 3587 in the name of petitioner Nieves with an area of 2.6360 hectares.^[4] In their complaint, petitioners prayed that judgment be rendered confirming their rights and legal title to the subject property and ordering the defendants to vacate the occupied portion and to pay damages.^[5]

Respondents, for their part, denied petitioners' allegation of ownership and possession of the premises, and interposed, as their main defense, that the subject land was inherited by all the parties from their common ancestor, Francisco Plasabas.^[6]

Revealed in the course of the trial was that petitioner Nieves, contrary to her allegations in the complaint, was not the sole and absolute owner of the land. Based on the testimonies of petitioners' witnesses, the property passed on from Francisco to his son, Leoncio; then to Jovita Talam, petitioner Nieves' grandmother; then to Antonina Talam, her mother; and then to her and her siblings--Jose, Victor and Victoria.^[7]

After resting their case, respondents raised in their memorandum the argument that the case should have been terminated at inception for petitioners' failure to implead indispensable parties, the other co-owners - Jose, Victor and Victoria.

In its April 19, 1993 Order,^[8] the trial court, without ruling on the merits, dismissed the case without prejudice, thus:

This Court, much as it wants to decide the instant case on the merits, being one of the old inherited cases left behind, finds difficulty if not impossibility of doing so at this stage of the proceedings when both parties have already rested their cases. Reluctantly, it agrees with the defendants in the observation that some important indispensable consideration is conspicuously wanting or missing.

It is not the Court's wish to turn its back on the crucial part of the case, which is the pronouncement of the judgment to settle the issues raised in the pleadings of the parties once and for all, after all the time, effort and expense spent in going through the trial process.

But, rules are rules. They have to be followed, to arrive at a fair and just verdict. Section 7, Rule 3 of the Rules of Court provides:

"x x x Compulsory joinder of indispensable parties. - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants."

What the Court wants to say here is that the instant case should have been dismissed without prejudice a long time ago for lack of cause of action as the plaintiffs spouses Marcos Malazarte and Nieves Plasabas Malazarte have no complete legal personality to sue by themselves alone without joining the brothers and sisters of Nieves who are as **INDISPENSABLE** as the latter in the final determination of the case. Not impleading them, any judgment would have no effectiveness.

They are that indispensable that a final decree would necessarily affect their rights, so that the Court cannot proceed without their presence. There are abundant authorities in this regard. Thus -

"The general rule with reference to the making of parties in a civil action requires the joinder of all indispensable parties under any and all conditions, their presence being a sine qua non of the exercise of judicial power. (Borlasa v. Polistico, 47 Phil. 345, 348) For this reason, our Supreme Court has held that when it appears of record that there are other persons interested in the subject matter of the litigation, who are not made parties to the action, it is the duty of the court to suspend the trial until such parties are made either plaintiffs or defendants. (Pobre, et al. v. Blanco, 17 Phil. 156). x x x Where the petition failed to join as party defendant the person interested in sustaining the proceeding in the court, the same should be dismissed. x x x When an indispensable party is not before the court, the action should be dismissed. (People, et al. v. Rodriguez, et al., G.R. Nos. L-14059-62, September 30, 1959) (sic)

"Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (Sec. 7, Rule 3, Rules of Court). The burden of procuring the presence of all indispensable parties is on the plaintiff. (39 Amjur [sic] 885). The evident purpose of the rule