

THIRD DIVISION

[G.R. NO. 170354, June 30, 2006]

EDGARDO PINGA, PETITIONER, VS. THE HEIRS OF GERMAN SANTIAGO REPRESENTED BY FERNANDO SANTIAGO, RESPONDENTS.

D E C I S I O N

TINGA, J.:

The constitutional faculty of the Court to promulgate rules of practice and procedure^[1] necessarily carries the power to overturn judicial precedents on points of remedial law through the amendment of the Rules of Court. One of the notable changes introduced in the 1997 Rules of Civil Procedure is the explicit proviso that if a complaint is dismissed due to fault of the plaintiff, such dismissal is "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action."^[2] The innovation was instituted in spite of previous jurisprudence holding that the fact of the dismissal of the complaint was sufficient to justify the dismissal as well of the compulsory counterclaim.^[3]

In granting this petition, the Court recognizes that the former jurisprudential rule can no longer stand in light of Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

The relevant facts are simple enough. Petitioner Eduardo Pinga was named as one of two defendants in a complaint for injunction^[4] filed with Branch 29 of the Regional Trial Court (RTC)^[5] of San Miguel, Zamboanga del Sur, by respondent Heirs of German Santiago, represented by Fernando Santiago. The Complaint^[6] dated 28 May 1998 alleged in essence that petitioner and co-defendant Vicente Saavedra had been unlawfully entering the coco lands of the respondent, cutting wood and bamboos and harvesting the fruits of the coconut trees therein. Respondents prayed that petitioner and Saavedra be enjoined from committing "acts of depredation" on their properties, and ordered to pay damages.

In their Amended Answer with Counterclaim,^[7] petitioner and his co-defendant disputed respondents' ownership of the properties in question, asserting that petitioner's father, Edmundo Pinga, from whom defendants derived their interest in the properties, had been in possession thereof since the 1930s.^[8] They alleged that as far back as 1968, respondents had already been ordered ejected from the properties after a complaint for forcible entry was filed by the heirs of Edmundo Pinga. It was further claimed that respondents' application for free patent over the properties was rejected by the Office of the President in 1971. Defendants in turn prayed that owing to respondents' forcible re-entry in the properties and the irresponsible and reckless filing of the case, they be awarded various types of damages instead in amounts totaling P2,100,000 plus costs of suit.^[9]

By July of 2005, the trial of the case had not yet been completed. Moreover, respondents, as plaintiffs, had failed to present their evidence. It appears that on 25 October 2004, the RTC already ordered the dismissal of the complaint after respondents' counsel had sought the postponement of the hearing scheduled then. [10] However, the order of dismissal was subsequently reconsidered by the RTC in an Order dated 9 June 2005, which took into account the assurance of respondents' counsel that he would give priority to that case. [11]

At the hearing of 27 July 2005, plaintiffs' counsel on record failed to appear, sending in his stead a representative who sought the postponement of the hearing. Counsel for defendants (who include herein petitioner) opposed the move for postponement and moved instead for the dismissal of the case. The RTC noted that it was obvious that respondents had failed to prosecute the case for an unreasonable length of time, in fact not having presented their evidence yet. On that ground, the complaint was dismissed. At the same time, the RTC allowed defendants "to present their evidence *ex-parte*." [12]

Respondents filed a Motion for Reconsideration [13] of the order issued in open court on 27 July 2005, opting however not to seek that their complaint be reinstated, but praying instead that the entire action be dismissed and petitioner be disallowed from presenting evidence *ex-parte*. Respondents claimed that the order of the RTC allowing petitioner to present evidence *ex-parte* was not in accord with established jurisprudence. They cited cases, particularly *City of Manila v. Ruymann* [14] and *Domingo v. Santos*, [15] which noted those instances in which a counterclaim could not remain pending for independent adjudication.

On 9 August 2005, the RTC promulgated an order granting respondents' Motion for Reconsideration and dismissing the counterclaim, citing as the only ground therefor that "there is no opposition to the Motion for Reconsideration of the [respondents]." [16] Petitioner filed a Motion for Reconsideration, but the same was denied by the RTC in an Order dated 10 October 2005. [17] Notably, respondents filed an Opposition to Defendants' Urgent Motion for Reconsideration, wherein they argued that the prevailing jurisprudential rule [18] is that "compulsory counterclaims cannot be adjudicated independently of plaintiff's cause of action," and "a conversu, the dismissal of the complaint carries with it the dismissal of the compulsory counterclaims." [19]

The matter was elevated to this Court directly by way of a Petition for Review under Rule 45 on a pure question of law, the most relevant being whether the dismissal of the complaint necessarily carries the dismissal of the compulsory counterclaim.

We hold that under Section 3, Rule 17 of the 1997 Rules of Civil Procedure, the dismissal of the complaint due to the fault of plaintiff does not necessarily carry with it the dismissal of the counterclaim, compulsory or otherwise. In fact, the dismissal of the complaint is without prejudice to the right of defendants to prosecute the counterclaim.

On a prefatory note, the RTC, in dismissing the counterclaim, did not expressly adopt respondents' argument that the dismissal of their complaint extended as well

to the counterclaim. Instead, the RTC justified the dismissal of the counterclaim on the ground that "there is no opposition to [plaintiff's] Motion for Reconsideration [seeking the dismissal of the counterclaim]."^[20] This explanation is hollow, considering that there is no mandatory rule requiring that an opposition be filed to a motion for reconsideration without need for a court order to that effect; and, as posited by petitioner, the "failure to file an opposition to the Plaintiff's Motion for Reconsideration is definitely not one among the established grounds for dismissal [of the counterclaim]."^[21] Still, the dismissal of the counterclaim by the RTC betrays at very least a tacit recognition of respondents' argument that the counterclaim did not survive the dismissal of the complaint. At most, the dismissal of the counterclaim over the objection of the defendant (herein petitioner) on grounds other than the merits of the counterclaim, despite the provisions under Rule 17 of the 1997 Rules of Civil Procedure, constitutes a debatable question of law, presently meriting justiciability through the instant action. Indeed, in reviewing the assailed orders of the RTC, it is inevitable that the Court consider whether the dismissal of the complaint, upon motion of the defendant, on the ground of the failure to prosecute on plaintiff's part precipitates or carries with it the dismissal of the pending counterclaims.

Our core discussion begins with Section 3, Rule 17 of the 1997 Rules of Civil Procedure, which states:

SEC. 3. Dismissal due to fault of plaintiff.— If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The express qualification in the provision that the dismissal of the complaint due to the plaintiff's fault, as in the case for failure to prosecute, is without prejudice to the right of the defendant to prosecute his counterclaim in the same or separate action. This stands in marked contrast to the provisions under Rule 17 of the 1964 Rules of Court which were superseded by the 1997 amendments. In the 1964 Rules, dismissals due to failure to prosecute were governed by Section 3, Rule 17, to wit:

SEC. 3. Failure to prosecute. —If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

Evidently, the old rule was silent on the effect of such dismissal due to failure to prosecute on the pending counterclaims. As a result, there arose what one authority on remedial law characterized as "the nagging question of whether or not the dismissal of the complaint carries with it the dismissal of the counterclaim."^[22] Jurisprudence construing the previous Rules was hardly silent on the matter.

In their arguments before the RTC on the dismissal of the counterclaim, respondents cited in support *City of Manila v. Ruymann*,^[23] *Domingo v. Santos*,^[24] *Belleza v. Huntington*,^[25] and *Froilan v. Pan Oriental Shipping Co.*,^[26] all of which were decided more than five decades ago. Notably though, none of the complaints in these four cases were dismissed either due to the fault of the plaintiff or upon the instance of the defendant.^[27]

The distinction is relevant, for under the previous and current incarnations of the Rules of Civil Procedure, it is Section 3, Rule 17 that governs the dismissals due to the failure of the plaintiff to prosecute the complaint, as had happened in the case at bar. Otherwise, it is Section 2, Rule 17, which then, and still is now, covered dismissals ordered by the trial court upon the instance of the plaintiff.^[28] Yet, as will be seen in the foregoing discussion, a discussion of Section 2 cannot be avoided as the postulate behind that provision was eventually extended as well in cases that should have properly been governed by Section 3.

Even though the cases cited by respondents involved different factual antecedents, there exists more appropriate precedents which they could have cited in support of their claim that the counterclaim should have been dismissed even if the dismissal of the complaint was upon the defendants' motion and was predicated on the plaintiff's fault. *BA Finance Corp. v. Co*^[29] particularly stands out in that regard, although that ruling is itself grounded on other precedents as well. Elucidation of these cases is in order.

On the general effect of the dismissal of a complaint, regardless of cause, on the pending counterclaims, previous jurisprudence laid emphasis on whether the counterclaim was compulsory or permissive in character. The necessity of such distinction was provided in the 1964 Rules itself, particularly Section 2, Rule 17, which stated that in instances wherein the plaintiff seeks the dismissal of the complaint, "if a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court."^[30] The vaunted commentaries of Chief Justice Moran, remarking on Section 2, Rule 17, noted that "[t]here are instances in which a counterclaim cannot remain pending for independent adjudication, as, where it arises out of, or is necessarily connected with, the transaction or occurrence which is the subject matter of the opposing party's claim."^[31]

This view expressed in Moran's Commentaries was adopted by the Court in cases where the application of Section 2, Rule 17 of the 1964 Rules of Court was called for, such as in *Lim Tanhu v. Ramolete*,^[32] and *Dalman v. City Court of Dipolog City*.^[33] The latter case warrants brief elaboration. Therein, the plaintiff in a civil case for damages moved for the withdrawal of her own case on the ground that the dispute had not been referred to the barangay council as required by law. Over the objection of the defendant, who feared that her own counterclaim would be prejudiced by the dismissal, plaintiff's motion was granted, the complaint and the counterclaim accordingly dismissed by the trial court. The Court refused to reinstate the counterclaim, opining without elaboration, "[i]f the civil case is dismissed, so also is the counterclaim filed therein."^[34] The broad nature of that statement gave rise to the notion that the mandatory dismissal of the counterclaim upon dismissal of

the complaint applied regardless of the cause of the complaint's dismissal.^[35]

Notably, the qualification concerning compulsory counterclaims was provided in Section 2, Rule 17 of the 1964 Rules, the provision governing dismissals by order of the court, and not Section 3, Rule 17. As stated earlier, Section 3, which covered dismissals for failure to prosecute upon motion of the defendant or upon *motu proprio* action of the trial court, was silent on the effect on the counterclaim of dismissals of such nature.

Spouses Sta. Maria, Jr. v. Court of Appeals,^[36] decided in 1972, ostensibly supplied the gap on the effect on the counterclaim of complaints dismissed under Section 3. The defendants therein successfully moved before the trial court for the dismissal of the complaint without prejudice and their declaration in default on the counterclaim after plaintiffs therein failed to attend the pre-trial. After favorable judgment was rendered on the counterclaim, plaintiffs interposed an appeal, citing among other grounds, that the counterclaim could no longer have been heard after the dismissal of the complaint. While the Court noted that the adjudication of the counterclaim in question "does not depend upon the adjudication of the claims made in the complaint since they were virtually abandoned by the non-appearance of the plaintiffs themselves," it was also added that "[t]he doctrine invoked is not available to plaintiffs like the petitioners, who prevent or delay the hearing of their own claims and allegations."^[37] The Court, through Justice JBL Reyes, noted:

The doctrine that the complaint may not be dismissed if the counterclaim cannot be independently adjudicated is not available to, and was not intended for the benefit of, a plaintiff who prevents or delays the prosecution of his own complaint. Otherwise, the trial of counterclaims would be made to depend upon the maneuvers of the plaintiff, and the rule would offer a premium to vexing or delaying tactics to the prejudice of the counterclaimants. It is in the same spirit that we have ruled that a complaint may not be withdrawn over the opposition of the defendant where the counterclaim is one that arises from, or is necessarily connected with, the plaintiff's action and cannot remain pending for independent adjudication.^[38]

There is no doubt that under the 1964 Rules, the dismissal of a complaint due to the failure of the plaintiff to appear during pre-trial, as what had happened in *Sta. Maria*, fell within the coverage of Section 3, Rule 17. On the other hand, Section 2 was clearly limited in scope to those dismissals sustained at the instance of the plaintiff.^[39] Nonetheless, by the early 1990s, jurisprudence was settling on a rule that compulsory counterclaims were necessarily terminated upon the dismissal of the complaint not only if such dismissal was upon motion of the plaintiff, but at the instance of the defendant as well. Two decisions from that period stand out in this regard, *Metals Engineering Resources Corp. v. Court of Appeals* ^[40] and *International Container Terminal Services v. Court of Appeals*.^[41]

In *Metals*, the complaint was expunged from the record after the defendant had filed a motion for reconsideration of a trial court order allowing the filing of an amended complaint that corrected a jurisdictional error in the original complaint pertaining to the specification of the amount of damages sought. When the defendant was nonetheless allowed to present evidence on the counterclaim, the plaintiff assailed