

SECOND DIVISION

[G.R. NO. 159699, March 16, 2005]

ROSALINO P. ACANCE, IN HIS CAPACITY AS ATTORNEY-IN-FACT, ADMINISTRATOR OF PROPERTY AND AS COUNSEL OF SPOUSES JESULITO P. ACANCE AND VILMA ACANCE, SPOUSES MANUEL P. ACANCE AND GUIA ACANCE, AND SPOUSES NESTOR P. ACANCE AND LYNNE ACANCE, PETITIONERS, VS. COURT OF APPEALS, SPOUSES YOLANDA QUIJANO TRIA AND AMBROCIO TRIA, SPOUSES EPIFANIA QUIJANO AND RAPHAEL VILLANUEVA, AND SPOUSES NAPOLEON PAGLICAWAN QUIJANO AND PILAR Z. QUIJANO, REPRESENTED BY THEIR ATTORNEY-IN-FACT, ENGR. JULIUS VILLANUEVA, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Resolution^[1] dated November 29, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 71658. In the said resolution, the appellate court dismissed the petition for *certiorari* filed therewith for failure to file a motion for reconsideration with the court *a quo*. Likewise sought to be reversed is the appellate court's Resolution dated August 27, 2003 denying the reconsideration of its earlier resolution.

The case stemmed from the following facts:

On May 23, 2001, Spouses Yolanda Quijano and Ambrocio Tria, Spouses Epifania Quijano and Raphael Villanueva, Spouses Napoleon and Pilar Quijano (respondents herein), represented by their attorney-in-fact Engr. Julius F. Villanueva, filed with the Regional Trial Court (RTC) of Muntinlupa an amended complaint against Spouses Jesulito and Vilma Acance, Spouses Nestor and Lynne Acance, and Spouses Manuel and Guia Acance (petitioners herein). The case was docketed as Civil Case No. 01-122 and raffled to Branch 276 of the RTC of Muntinlupa City.

The amended complaint sought to annul the Extra-Judicial Settlement of the Estate of Deceased Jesus P. Acance and Waiver of Rights dated February 10, 1997, executed by Jesulito, Manuel and Nestor, all surnamed Acance, and their mother Angela. The estate covered by the said extra-judicial settlement included two parcels of land with a total area of 1,044 square meters under Transfer Certificates of Titles (TCT) Nos. 239998 and 242993 and the improvements thereon consisting of a 9-door apartment units, situated in Muntinlupa City. Following the execution of the extra-judicial settlement, TCT Nos. 239998 and 242993, which were in the names of Jesus and Angela Acance, were cancelled and, in their stead, TCT Nos. 4365 and 4366 were issued in the names of the Acance siblings.

The amended complaint alleged that the siblings Yolanda, Epifania and Napoleon were the legitimate children of Angela Paglicawan and Vernier Quijano. The couple, however, became estranged after the birth of their youngest child. Upon their separation, Vernier continued to reside in Looc, Occidental Mindoro while Angela went to Manila to work as a nurse at the National Mental Hospital in Muntinlupa City. While working thereat, Angela met Jesus Acance. They lived together as common law husband and wife and bore the siblings Jesulito, Manuel and Nestor.

Some time in 1966, Angela went to the United States to work as a nurse. With the savings she earned therefrom, she acquired the subject parcels of land in Muntinlupa and had the subject 9-door apartment units constructed thereon. Jesus Acance lived with Angela in the United States. After Vernier passed away in 1989, Jesus and Angela got married in 1990. Jesus died in 1996 in the United States.

In seeking to nullify the extra-judicial settlement of estate executed by the Acance siblings and their TCT Nos. 4365 and 4366, the Quijano siblings alleged that the subject real properties are conjugal properties of Angela and Vernier because these were acquired by Angela during the subsistence of her first marriage with Vernier. As such, they (the Quijano siblings) have a valid right to succeed over the said properties as the lawful and compulsory heirs of Angela and Vernier.

The Quijano siblings impugned the validity of the extra-judicial settlement claiming that the signature of Angela thereon was a forgery or that she affixed the same without her free volition because at the time of its execution, she was already senile. In any case, Angela's purported waiver of her rights over the subject properties in favor of her children with Jesus (Acance siblings) and excluding her children with Vernier (Quijano siblings) is against the law. Consequently, TCT Nos. 4365 and 4366 of the Acance siblings are allegedly also void as they emanated from the forged deed of extra-judicial settlement.

On April 26, 2002, upon motion of the respondents (the Quijano siblings and their spouses), as plaintiffs therein, the court *a quo* issued an order declaring the petitioners (the Acance siblings and their spouses), as defendants therein, in default for their failure to file an answer to the amended complaint.

On May 13, 2002, petitioner Rosalino Acance, as attorney-in-fact and administrator of the subject properties, filed with the court *a quo* a Motion to Lift/Set Aside Order of Default. In his affidavit of merit attached to the said motion, petitioner Rosalino alleged that the Acance siblings had appointed him as their private prosecutor in a criminal case involving the subject real properties. On January 25, 2002, upon learning about Civil Case No. 01-122, he filed therein a Motion to Represent Defendants and set the same for hearing on February 5, 2002. On the said date, however, petitioner Rosalino found out that his motion was not included in the court calendar for that day. Since there was no action on his motion, he had the impression that the court *a quo* needed time to determine other jurisdictional requirements considering that the petitioners are American citizens and non-residents of the Philippines.

Petitioner Rosalino further alleged that he had not received a copy of the complaint filed in Civil Case No. 01-122. The only pleading he received pertaining to the case was that of the motion to declare the petitioners in default and setting the hearing

thereon on April 26, 2002. At the said hearing, the respondents' motion was granted and the petitioners were declared in default.

The affidavit of merit likewise alleged that the petitioners have a valid and meritorious defense including that the subject real properties were acquired by their parents, Jesus and Angela, with both their earnings during the period that they lived together. They denied that these were paraphernal properties of Angela or conjugal properties of Angela and Vernier. The petitioners further claimed that the extra-judicial settlement was duly executed by them and Angela's waiver of her rights over the subject properties in their favor was validly made. To prove that Angela really intended to transfer the properties to them, the petitioners presented her Last Will and Testament executed in the United States on December 6, 1996 in which she bequeathed to them all her properties, real and personal, wherever situated.

In its Order dated June 27, 2002, the court *a quo* denied the motion to lift the order of default. It explained that the petitioners are all residing abroad but the real properties subject of the complaint are situated in Muntinlupa City. Accordingly, upon motion, they were deemed served with the summons and the amended complaint through publication thereof in a newspaper of general circulation in Muntinlupa City, where the properties are located, and nationwide on October 20, 2001. The petitioners had sixty (60) days from the last publication or until December 2, 2001 within which to file their answer. However, they failed to do so.

More than a month later, or on January 25, 2002, petitioner Rosalino filed the motion to represent the petitioners and asked for sixty (60) days to file an answer. According to the court *a quo*, since the motion was not an adversarial pleading it was no longer included in the court calendar. It stressed that at the time said counsel entered his appearance, the period to file an answer had long expired. Further, the 60 days extension prayed for was not denied. However, the petitioners still failed to file their answer within the extension period prayed for.

The court *a quo* faulted petitioner Rosalino, as counsel, for erroneously assuming that since it failed to rule on his entry of appearance, the period to file an answer was suspended. It pointed out that the fact that the counsel may be allowed to represent a party-litigant or not does not toll the running of the period to file the responsive pleading to the complaint.

Forthwith, the petitioners filed with the Court of Appeals a petition for *certiorari* alleging grave abuse of discretion on the part of the court *a quo* in denying their motion to lift the default order. Preliminarily, they averred that they dispensed with the filing of a motion for reconsideration with the court *a quo* because of the urgency of the matter as well as the fact that they raised jurisdictional issues in their motion to lift the default order.

They contended that, in denying their motion to lift the order of default, the court *a quo* adopted a rigid, strict and technical stance. Further, petitioner Rosalino, as their counsel, was of the honest belief that when the court *a quo* did not act on his motion to represent the petitioners, it was still determining whether all the requirements for a valid extraterritorial service was made on them. They, likewise, harped on the fact that the court *a quo*'s order denying their motion to lift order of default had been promulgated before they even filed their reply to the respondents' opposition. They maintained that the court *a quo* did not acquire jurisdiction over

the petitioners because no valid extraterritorial service of summons was made on them.

On November 29, 2002, the appellate court rendered the assailed Resolution dismissing outright the petition for *certiorari* for failure of the petitioners to file a motion for reconsideration with the court *a quo*. In so doing, it applied the general rule that the filing of a motion for reconsideration of the disputed order is a condition sine qua non in order that *certiorari* will lie. The petitioners moved for the reconsideration of the said resolution but it was denied in the assailed Resolution dated August 27, 2003. Hence, the recourse to this Court by the petitioners.

It is contended by the petitioners that the appellate court committed reversible error in dismissing their petition for *certiorari* for failure to file a motion for reconsideration with the court *a quo*. They posit that such omission is not fatal. They maintain that they have a meritorious defense in Civil Case No. 01-122 and that grave injuries and injustice would be inflicted on them unless they are afforded the full opportunity to protect their interests. On the other hand, no undue prejudice would be caused the respondents in the event that the order of default is lifted and the action in the court *a quo* is heard on the merits.

According to the petitioners, the non-filing of a motion for reconsideration was justified because the need for relief was extremely urgent and a motion for reconsideration was not a plain and adequate remedy under the circumstances of the case. Moreover, the questions raised before the appellate court were the same as those which have been raised in the motion to lift order of default and already passed upon by the court *a quo*. Finally, the failure to file a responsive pleading to the respondents' amended complaint was due to the excusable negligence of the petitioners' counsel.

For their part, the respondents urge the Court to deny the petition for review. They are of the view that the appellate court correctly applied the general rule that the filing of a motion for reconsideration is a condition sine qua non in order that *certiorari* will lie.

The threshold issue that needs to be resolved is whether the CA committed reversible error in dismissing the petition for *certiorari* for failure of the petitioners to file a motion for reconsideration with the court *a quo*.

The Court rules in the affirmative.

The rule is well settled that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.^[2] However, this rule admits of exceptions including:

- a. where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- b. where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the