

SECOND DIVISION

[G.R. NO. 129704, September 30, 2005]

ULPIANO BALO, LYDIA BALO-LUMPAS, EUGENIO BALO, ULPIANO BALO, JR., NIDA BALO-MORALETA, NORA BALO-CATANO, ZAIDA BALO, JUDITH BALO-MANDREZA, DANILO BALO AND RONILO BALO, P E T I T I O N E R S, VS. THE HON. COURT OF APPEALS, HON. JUDGE ENRIQUE ASIS AND JOSEFINA GARRIDO, R E S P O N D E N T S.

DECISION

CHICO-NAZARIO, J.:

A complaint for Judicial Partition of Real Properties and Accounting with Damages, docketed as Civil Case No. 279, was filed by private respondent Josefina Garrido against petitioners Ulpiano Balo, Lydia Balo-Lumpas, Eugenio Balo, Ulpiano Balo, Jr., Nida Balo-Moraleta, Nora Balo-Catano, Zaida Balo, Judith Balo-Mandreza, Danilo Balo and Ronilo Balo, before the Regional Trial Court (RTC) of Abuyog, Leyte, Branch 10, alleging that she (private respondent) and petitioners are the co-owners of undivided parcels of land located at Mayorga, Leyte. According to her, these lands were originally owned by the spouses Eugenio Balo, Sr. and Ma. Pasagui-Balo, who, at the time of the filing of the complaint, were already deceased. The Balo spouses were survived by their two (2) children, Ulpiano, Sr. and Maximino, the latter likewise deceased. Private respondent is the daughter of Maximino Balo and Salvacion Sabulao. Petitioner Ulpiano Balo is the son of Eugenio Balo, Sr., while the other petitioners, the children of Ulpiano, are Eugenio's grandchildren.

Private respondent further alleged in her complaint that immediately upon the death of her grandfather, Eugenio Sr., the petitioners took possession of the said real properties without her knowledge and consent. The petitioners being her uncle and cousins, private respondent earnestly requested them that they come up with a fair and equal partition of the properties left by her grandparents. The petitioners having outrightly refused her proposal, private respondent filed the complaint.^[1]

In lieu of an Answer, petitioners filed a Motion to Dismiss^[2] on the following grounds:

1. Failure to state a cause of action - plaintiff, though she claims to be a daughter of Maximino who died sometime in 1946, failed to allege whether or not she is a legitimate child. Plaintiff's failure to allege legitimacy is fatal considering the provision of Article 992 of the Civil Code.^[3] To allow Plaintiff to inherit from the estate of the spouses Eugenio and Maria Balo in representation of her father Maximino Balo would be to permit intestate succession by an illegitimate child from the legitimate parent of his father, assuming

that she is the child of Maximino Balo.

2. The complaint does not show that the estate of the spouses Eugenio and Maria Balo have been settled and its obligations have been paid.
3. The properties enumerated in the Complaint were proceeded against by way of execution to satisfy a judgment against Eugenio and Maria Balo. Subsequently, defendant Ulpiano repurchased the said properties and has been, together with his children, openly, exclusively and adversely in possession of the real estate properties in question.

Private respondent filed her comment/opposition to the motion to dismiss.^[4]

In an Order dated 12 September 1996, the RTC denied the motion to dismiss for lack of merit.^[5] The trial court held:

The complaint clearly states that the late Eugenio Balo, Sr., and Maria Pasagui Balo had two (2) children, namely: Ulpiano, Sr. and Maximino. The plaintiff is the daughter of the late Maximino Balo and Salvacion Sabulao; while the defendants are children of the late Ulpiano Balo, Sr. and Felicidad Superio.

The complaint enumerates/annexes 13 tax declarations in the name of Eugenio Balo, Sr. marked as Annexes "A" to "M." The plaintiff as an heir prays that these parcels of land be partitioned in accordance with Article 982 of the Civil Code which states:

"The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

No evidence may be alleged or considered to test the sufficiency of the complaint except the very facts pleaded therein. It would be improper to inject into the allegation, facts not alleged and use them as basis for the decision on the motion.

The Court is not permitted to go beyond and outside of the allegations in the complaint for data or facts.

Therefore, the allegation of illegitimacy and claim of absolute ownership are modifications and unreasonable inferences. If there is doubt to the truth of the facts averred in the complaint, the Court does not dismiss the complaint but requires an answer and proceeds to hear the case on the merit.^[6]

Petitioners filed a Motion for Reconsideration^[7] which the RTC denied in its Order^[8] dated 07 November 1996.

Petitioners filed a Petition for *Certiorari*^[9] before the Court of Appeals. After the

filing of Comment and other pleadings, the case was deemed submitted for decision. In a resolution dated 16 April 1997, the Court of Appeals denied due course to the petition and accordingly dismissed the same. The Court of Appeals justified the dismissal in the following manner:

It is an established rule that an order denying a motion to dismiss is basically interlocutory in character and cannot be the proper subject of a petition for *certiorari*. When a motion to dismiss is denied, the proper procedure is to proceed with the trial and if the decision be adverse to the movant, the remedy is to take an appeal from said decision, assigning as one of the errors therefore the denial of the motion to dismiss.^[10]

Petitioners filed a Motion for Reconsideration^[11] which the Court of Appeals denied in a resolution dated 30 June 1997.^[12] Hence this petition for review^[13] under Rule 45 of the Rules of Court.

Petitioners cite the following grounds for the allowance of their petition, to wit:

I

WHETHER OR NOT THE FAILURE TO ALLEGE THE NATURE AND EXTENT OF PLAINTIFF'S TITLE IN A PETITION FOR PARTITION IS FATAL TO ITS CAUSE OF ACTION.

II

WHETHER OR NOT THE ACTION FOR JUDICIAL PARTITION AND ACCOUNTING HAS PRESCRIBED, WAS WAIVED, OR WAS OTHERWISE ABANDONED.^[14]

At the threshold of the instant petition for review is the correctness of the appellate court's dismissal of the petition for *certiorari* filed by the petitioners.

In resolving to deny the petition, the Court of Appeals relied on the long established jurisprudence that an order denying a motion to dismiss is interlocutory and cannot be the proper subject of a petition for *certiorari*.

The general rule regarding denial of a motion to dismiss as a basis of a resort to the extraordinary writ of *certiorari* is that:

. . . [A]n order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment.

To justify the grant of the extraordinary remedy of *certiorari*, therefore, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. By "grave abuse of discretion" is meant, such

capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.^[15]

Specific instances whereby the rule admits certain exceptions are provided as follows:

. . . Under certain situations, recourse to *certiorari* or *mandamus* is considered appropriate, *i.e.*, (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case.^[16]

Applying the foregoing, the Court of Appeals should not have dismissed the petition outright as the same alleges grave abuse of discretion. Instead, it should have proceeded to determine whether or not the trial court did commit grave abuse of discretion as alleged by the petitioners. The Court of Appeals having failed in this regard, it behooves upon this Court to discuss the merits of the petition to put to rest the issues raised by the petitioners.

Contrary to petitioners' contention, allegations sufficient to support a cause of action for partition may be found in private respondent's complaint.^[17]

Nothing is more settled than the rule that in a motion to dismiss for failure to state a cause of action, the inquiry is into the sufficiency, not the veracity, of the material allegations.^[18] Moreover, the inquiry is confined to the four corners of the complaint, and no other.^[19]

In a motion to dismiss a complaint based on lack of cause of action, the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint.

The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. (Garcon vs. Redemptorist Fathers, 17 SCRA 341)

If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits. (Galeon vs. Galeon, 49 SCRA 516-521)^[20]