

THIRD DIVISION

[G.R. No. 157830, November 17, 2005]

**DANTE M. PASCUAL, REPRESENTED BY REYMEL R. SAGARIO,
PETITIONER, VS MARILOU M. PASCUAL, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

On challenge via Petition for Review on Certiorari is the February 10, 2003 Order of the Regional Trial Court (RTC) of Isabela, Branch 23 at Roxas dismissing, on motion of herein respondent Marilou M. Pascual, the complaint filed against her by her brother-herein petitioner Dante M. Pascual, represented by his attorney-in-fact Reymel R. Sagario (Sagario), for non-compliance with the conciliation provision-pre condition to filing of complaint in court under R.A. 7160 (the Local Government Code).

Petitioner, a permanent resident of the United States of America, appointed Sagario as his attorney-in-fact by a Special Power of Attorney (SPA) dated April 10, 2002:

1. To file a case for the cancellation of Transfer Certificate of Title No. T-271656 issued in the name of Marilou M. Pascual as well as the Deed of Sale of Registered Land (Dec. No. 639; Page No. 52; Book No. XXI; Series of 1994) and/or Reconveyance at the appropriate court;
2. To collect the monthly rentals from the tenant;
3. To enter into amicable settlement with Marilou M. Pascual or any other mode of payment/and/or dispute resolution;
4. To execute and sign any and all papers, contracts/documents which may be necessary relative to the above acts.

x x x^[1]

Pursuant to the SPA, Sagario filed on October 14, 2002 before the Isabela RTC at Roxas a complaint entitled "*Dante M. Pascual, plaintiff v. Marilou M. Pascual and Register of Deeds, Defendants*," docketed as Civil Case No. Br. 23-713-02, for Annulment of Transfer Certificate of Title No. T-271657 of Isabela and Deed of Absolute Sale of Registered Land and/or Reconveyance with Damages.^[2]

To the Complaint the defendant-herein respondent Marilou M. Pascual filed a Motion to Dismiss^[3] on two grounds one of which was non-compliance with the requirement under Section 412 of the Local Government Code,^[4] she contending that there is no showing that the dispute was referred to the barangay court before

the case was filed in court.

By the assailed Order of February 10, 2003,^[5] Branch 23 of the Isabela RTC at Roxas granted respondent's Motion to Dismiss in this wise:

. . . RA 7160 repealing P.D. 1508 otherwise known as the Revised Katarungang Pambarangay provides under Section 409 "All disputes involving real property or any interest therein shall be brought in the barangay where the real property or the larger portion thereof is situated." Hence, the reliance of the plaintiff on Section 408 of R.A. 7160 is incorrect. When real property or any interest therein is involved, the dispute shall be filed before the barangay where the property is located, regardless of the residence of the parties. Besides, it is incorrect to say that the parties are not residents of the same place, Vira, Roxas, Isabela. **The Attorney-in-fact of the plaintiff in the person of Reymel R. Sagario is a resident of Vira, Roxas, Isabela, and he substitute (sic) Dante Pascual by virtue of said Special Power of Attorney.** Hence, said Attorney-in-fact should have brought the dispute before barangay Vira, Roxas, Isabela, where the property is located. In the case of Royales vs. Intermediate Appellate Court 127 SCRA 470, "Ordinarily, non-compliance with the condition precedent prescribed by P.D. 1508 could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on ground of lack of cause of action or prematurity."^[6] (Emphasis and underscoring supplied)

Petitioner's Motion for Reconsideration^[7] of the above-said order was denied by Order of March 24, 2003:^[8]

x x x

Consequently, the Court is [of] the opinion that the said **Attorney-in-fact shall be deemed to be the real party in interest,** reading from the tenor of the provisions of the Special Power of Attorney. Being a real party in interest, the Attorney-in-fact is therefore obliged to bring this case first before the Barangay Court. Sec. 3, Rule 3 of the Rules of Court provides that "Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest.

x x x

Being the real party in interest, the Attorney-in-fact may therefore bring the necessary complaint before the Lupon Tagapayapa and appear in person as if he is the owner of the land.^[9] (Emphasis and underscoring supplied)

Hence, the present petition questioning "the palpable legal errors" of the RTC.

Petitioner argues that since he, not his attorney-in-fact Sagario, is the real party in interest, and since he actually resides abroad, the lupon would have no jurisdiction to pass upon the dispute involving real property, he citing *Agbayani v. Belen*.^[10]

Respondent submits, on the other hand, that Section 408, paragraph (f), of the Local Government Code, is qualified by paragraph (c) of Section 409 of the same Code the latter of which provides that "[a]ll disputes involving real property or any interest therein shall be brought in the barangay where the real property is located," hence, the use of the word "shall" makes it mandatory for the bringing of the dispute before the *lupon*.

That attorney-in-fact Sagario is a resident of the same barangay as that of hers, respondent argues in any event, brings the matter under the jurisdiction of the *lupon*, for Sagario, following Section 3 of Rule 3 of the 1997 Rules of Civil Procedure which provides:

Sec. 3. *Representative as parties.* - Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal,

being a substitute, becomes the real party-in-interest.

Respondent's submissions do not lie.

The pertinent provisions of the Local Government Code read:

SEC. 408. *Subject Matter for Amicable Settlement; Exception Thereto.* - The lupon of each barangay shall have authority to bring together the parties **actually residing** in the same city or municipality for amicable settlement of all disputes except:

(a) Where one party is the government or any subdivision or instrumentality thereof;

(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five Thousand pesos (P5,000.00);

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon; and