

## TWENTY-THIRD DIVISION

[ CA-G.R. SP NO. 05018-MIN, February 27, 2015 ]

**DALE B. CHIONG AND GIL B. CHIONG, PETITIONERS, VS. THE HONORABLE REYNERIO G. ESTACIO, AS PRESIDING JUDGE OF BRANCH 14 REGIONAL TRIAL COURT OF ZAMBOANGA CITY; CENTRADE DEVELOPMENT CORPORATION, GRACE B. CHIONG, SPOUSES FERNANDO L. CHIONG AND AMELIA B. CHIONG, BANK OF THE PHILIPPINE ISLANDS, AND JEANNE B. CHIONG, RESPONDENTS.**

### DECISION

**SANTOS, J.:<sup>[1]</sup>**

This is a Petition for Certiorari<sup>[2]</sup> under Rule 65 of the Rules of Court seeking to set aside the Order<sup>[3]</sup> dated 19 January 2012 of the Regional Trial Court (RTC), Branch 14, Ninth Judicial Region, Zamboanga City, in Civil Case No. 6322 dismissing the same for failure of petitioners to appear for pre-trial and to submit their pre-trial brief; and the Order<sup>[4]</sup> dated 18 May 2012 denying their Omnibus Motion for Reconsideration, and To Admit Pre-Trial Brief.<sup>[5]</sup>

#### *The Antecedents*

Petitioners Dale B. Chiong and Gil B. Chiong (petitioners) are the brothers of private respondents Grace B. Chiong (Grace) and Jeanne B. Chiong (Jeanne), all of them being the legitimate children of private respondents Spouses Fernando L. Chiong and Amelia B. Chiong (Spouses Chiong).<sup>[6]</sup>

On 02 October 1996, the above-enumerated parties executed an Extra-Judicial Deed of Partition<sup>[7]</sup> over 22 parcels of land individually covered by titles in the name of the Spouses Chiong, whereby the latter allegedly for the purpose of terminating the existing community of ownership between them, "bequeath the entire estate xxx in favor of the [children]," dividing and adjudicating the properties to them, with the intention of physically partitioning the same.<sup>[8]</sup>

Subsequently, petitioners filed a Complaint, later an Amended Complaint dated 04 August 2011, for reconveyance and damages against their parents, Chiong Spouses, and their sisters, private respondents Grace and Jeanne,<sup>[9]</sup> allegedly because, without their (petitioners') knowledge and consent, one of the properties subject of the Extra-Judicial Deed of Partition, *i.e.*, the parcel of land covered by Transfer Certificate of Title (TCT) No. T-128,946, was mortgaged sometime in June 1997 by private respondent Grace, as attorney-in-fact of Spouses Chiong, in favor of private respondent Bank of the Philippine Islands (BPI), which the latter foreclosed and subsequently sold to private respondent Centrade Development Corporation (Centrade). The latter succeeded to have the subject property registered in its

name, *i.e.*, TCT No. 222,200. Allegedly constituting a violation of the Extra-Judicial Deed of Partition, petitioners assail the validity of the title acquired by Centrade because the Spouses Chiong allegedly were no longer the owners of the subject property when the mortgage was constituted. <sup>[10]</sup>

Private respondent BPI filed its Answer dated 05 August 2011<sup>[11]</sup> while private respondent Centrade's Answer was dated 05 October 2011.<sup>[12]</sup> Private respondents Chiongs' Answer dated 10 October 2011, although filed late and covered by a Manifestation and Motion to Admit Answer,<sup>[13]</sup> was admitted by the trial court in its Order<sup>[14]</sup> dated 17 November 2011 that also, at the same time, set the case for pre-trial on 19 January 2012.

On 27 December 2011, petitioners' counsel filed an Urgent Motion to Cancel and Reset Hearing, with the following pertinent allegations:

1. That the instant case is set for Pre-trial on January 19, 2012, at 8:30 o'clock in the morning.
2. Unfortunately, the undersigned counsel for the plaintiffs is not available on said date because it happened to coincide with the 10th death anniversary of his mother, which he has to attend as a matter of family tradition.
3. That in view of such circumstance, the undersigned counsel is left with no other option but to pray for a cancellation of hearing and for a resetting to another date. xxx<sup>[15]</sup>

In spite receipt by the trial court of the abovequoted Motion, it issued the assailed Order dated 19 January 2012 dismissing the case, which Order, in its entirety, reads:

When this case was called for Pre-Trial this morning, neither the plaintiffs nor their counsel, appeared. While there may be on record a Motion for Postponement filed by the counsel for the plaintiffs, the ground alleged therein that he has to attend the 10th death anniversary of his mother, is no excuse at least, for the plaintiffs themselves to appear in today's Pre-Trial, or even to file their pre-trial brief at least three (3) days before the date of the Pre-Trial.

Hence, upon motion of the counsel for the defendants, the instant case is hereby dismissed pursuant to Section 4, in relation to Sections 5 and 6, Rule 18 of the Revised Rules of Court."

SO ORDERED.<sup>[16]</sup>

Consequently, petitioners filed an "Omnibus Motion for Reconsideration, and to Admit Pre-Trial Brief,"<sup>[17]</sup> which drew Oppositions from private respondents Chiongs<sup>[18]</sup> and Centrade,<sup>[19]</sup> to which petitioners filed their Consolidated Reply.<sup>[20]</sup>

In the other assailed Order of 18 May 2012, the trial court denied petitioners' Omnibus Motion for Reconsideration in this wise:

After a thorough consideration of the grounds alleged in the plaintiffs' Omnibus Motion for Reconsideration and the defendants' opposition thereto, the court finds no cogent reason to reconsider its Order dated January 19, 2012.

Plaintiffs' contention that motions to dismiss take precedence over pre-trial is untenable. For the grounds of a motion to dismiss, including those alleged as affirmative defenses in the answers, can better be taken up during the pre-trial, and altogether, thereafter, resolved.

WHEREFORE, for lack of merit, the OMNIBUS Motion for Reconsideration, is DENIED.

SO ORDERED.<sup>[21]</sup>

Dissatisfied, on 25 July 2012, petitioners filed the instant petition, followed by a Supplement to Petition for Certiorari filed on 13 August 2012, purportedly to submit certified copies of the trial court's Orders assailed before this Court.<sup>[22]</sup>

Private respondents Chiong and Centrade filed their respective Comments on the petition,<sup>[23]</sup> while private respondent BPI adopted Centrade's Comment as its own.<sup>[24]</sup>

Thereafter, the parties submitted their respective Memoranda.<sup>[25]</sup> Then, this Court referred the instant case for mediation.<sup>[26]</sup> When mediation efforts failed, the case was returned to this Court for continuation of proceedings.<sup>[27]</sup>

### *The Issues*

Petitioners raise the following as the issues to be resolved in the instant petition, viz.:

I. RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT DISMISSED THE CASE FOR FAILURE OF PETITIONERS TO APPEAR BY THEMSELVES DURING THE SCHEDULED PRE-TRIAL ON 19 JANUARY 2012, AND FOR FAILURE TO FILE PRE-TRIAL BRIEF, DESPITE THE FACT THAT THEIR COUNSEL HAS EARLIER FILED A MOTION TO CANCEL AND RESET THE SCHEDULED PRE-TRIAL HEARING, AND DESPITE THE FACT THAT THE COURT FAILED TO ISSUE THE REQUIRED NOTICE OF HEARING IN ACCORDANCE WITH THE FORM PRESCRIBED IN A.M. NO. 03-1-09-SC; RE: GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES.

II. RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT INSISTED ON PROCEEDING TO PRE-TRIAL DESPITE THE PENDING MOTION TO DISMISS FILED BY COUNSEL FOR RESPONDENT CENTRADE DEVELOPMENT CORPORATION, AND DESPITE THE TIMELY FILED

MOTION TO CANCEL AND RESET HEARING BY COUNSEL FOR  
PETITIONERS.<sup>[28]</sup>

*This Court's Ruling*

For failure to appear by themselves during the scheduled pre-trial on 19 January 2012, and to file the required pre-trial brief, the trial court dismissed Civil Case No. 6322, to the dismay of petitioners. Asserting that their counsel had timely filed a Motion to Cancel and Reset the pre-trial, aside from the trial court's alleged failure to send them a proper notice of pre-trial, petitioners ascribe grave abuse of discretion upon the trial court for dismissing their case against private respondents.<sup>[29]</sup>

At the outset, it must be stated that by resorting to the instant action, petitioners have availed of the wrong mode of judicial review. It is a well-settled rule that a dismissal for failure to appear at the pre-trial hearing, with the plaintiff declared non-suited for failure to prosecute thereby ensuing to the dismissal of the complaint, is deemed an adjudication on the merits, unless otherwise stated in the order.<sup>[30]</sup> Such is the situation in the case at bar.

The remedy of certiorari does not lie to question the trial court's Order of 19 January 2012 dismissing petitioners' case. The rationale for this ruling was aptly elucidated in the case of *Chingkoe v. Republic*,<sup>[31]</sup> thus:

Respondent's Petition for Certiorari filed before the CA was not the proper remedy against the assailed Order of the RTC. Pursuant to Rule 65 of the Rules of Court, a special civil action for certiorari could only be availed of when a tribunal "acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction" or when it acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is settled that the Rules precludes recourse to the special civil action of certiorari if appeal by way of a Petition for Review is available, as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.

Here, respondent cannot plausibly claim that there is no plain, speedy, and adequate remedy available to it to question the dismissal Order of the trial court. The RTC Order does not fall into any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. It is clear from the tenor of the RTC's July 14, 2006 Order that it partakes of the nature of a final adjudication, as it fully disposed of the cases by dismissing them. In fine, there remains no other issue for the trial court to decide anent the said cases. The proper remedy, therefore, would have been the filing of a Notice of Appeal under Rule 41 of the Rules of Court. Such remedy is the plain, speedy, and adequate recourse under the law, and not a Petition for Certiorari under Rule 65, as respondent here filed before the CA.

A petition for certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy

occasioned such loss or lapse. When an appeal is available, certiorari will not prosper, even if the basis is grave abuse of discretion. The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, an ordinary appeal was the proper remedy. (citations omitted)

Similar to the ruling in the above-cited case, petitioners have not shown that the assailed Order of the RTC falls under any of the exceptions under Section 1, Rule 41, where appeal is not available as a remedy. Hence, had this Court dismissed the instant petition outright, it is confident that it cannot be faulted on that score.

Be that as it may, in order to put this issue to rest once and for all, this Court will nevertheless proceed to look into the central issue of this petition which is the propriety of the trial court's order of dismissal.

The factual milieu of the instant case is that on 17 November 2011, the trial court issued the Order setting Civil Case No. 6322 for pre-trial on 19 January 2012.<sup>[32]</sup> Then, petitioners' counsel filed on 27 December 2011 an Urgent Motion to Cancel and Reset Hearing on the ground that he "is not available on said date because it happened to coincide with the 10<sup>th</sup> death anniversary of his mother, which he has to attend as a matter of family tradition." He then prayed that the 19 January 2012 setting be cancelled, and be reset to a later date.<sup>[33]</sup>

The trial court, notwithstanding receipt of the Motion to Reset Hearing, found the ground therein as not sufficient to justify the failure of "the plaintiffs themselves to appear in today's Pre-Trial, or even to file their pre-trial brief at least three (3) days before the date of the Pre-Trial." Consequently, upon motion of the private respondents, the trial court dismissed the case "pursuant to Section 4, in relation to Sections 5 and 6, Rule 18 of the Revised Rules of Court."<sup>[34]</sup> Despite petitioners' Omnibus Motion for Reconsideration and to Admit Pre-Trial Brief,<sup>[35]</sup> the trial court stood pat on its dismissal order of 18 May 2012.<sup>[36]</sup>

Sections 3, 4, 5 and 6, Rule 18 of the Rules of Court provide, thus:

Sec. 3. Notice of pre-trial. The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

Sec. 4. Appearance of parties. It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Sec. 5. Effect of failure to appear. The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex