

## **FOURTEENTH DIVISION**

**[ CA-G.R. SP NO. 133844, March 30, 2015 ]**

**EMILIA R. AQUINO, PETITIONER, VS. HON. MARY JOSEPHINE P. LAZARO, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF ANTIPOLO, BRANCH 74, AND THE HEIRS OF BUENAVENTURA VALLE, REPRESENTED BY ESTER N. VALLE, RESPONDENTS.**

### ***D E C I S I O N***

**BATO, JR., J.:**

Assailed in this Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court are the 02 April 2013 and 31 October 2013 Orders of the Regional Trial Court (RTC) of Antipolo City, Branch 74, presided by respondent Judge Mary Josephine P. Lazaro.

On 29 August 2008, private respondents Heirs of Buenaventura Valle, represented by Ester N. Valle, filed a Complaint<sup>[2]</sup> for quieting of title, reconveyance, recovery of possession with damages against petitioner Emilia R. Aquino. Said complaint was docketed as Civil Case No. 08-8595 and raffled to the sala of respondent Judge Lazaro.

Private respondents alleged in their complaint that they are the owners of a parcel of land situated in Brgy. San Juan, Taytay, Rizal with an area of 8,399 square meters, more or less. Said land has been declared for taxation purposes under the name of their predecessor-in-interest, Buenaventura Valle, as evidenced by Tax Declaration (TD) No. 04-05171. After said lot was traversed by Hi-way 2000, the actual lot area became 5,625 square meters, more or less, covering portions of Cad Lot Nos. 3082 and 3087. Sometime recently, they discovered that the petitioner had been issued Original Certificate of Title (OCT) No. 372 covering Lot 3087-E, based on plan Csd-04-014957, Cad 688-D, Cainta-Taytay Cadastre. Consequently, they took steps to protect their rights over that portion of the land by registering their adverse claim with the Registry of Deeds for the Province of Rizal. Unfortunately, the adverse claim was not given due course. Thus, they prayed, among others, that the petitioner be ordered to reconvey to them the lot covered by OCT No. 372.

In her Answer with Compulsory Counterclaim<sup>[3]</sup>, petitioner denied all the material allegation of the Complaint. By way of affirmative defenses, she countered that the Complaint should be dismissed on grounds of lack of legal capacity to sue and forum shopping. The plaintiff "Heirs of Buenaventura Valle" is not a juridical entity authorized by law to be a party in a case. Moreover, although it is alleged in the complaint that Ester N. Valle represented all the heirs of Buenaventura Valle, the special power of attorney granted to her is only to sell, transfer or compromise the rights and interests of the other heirs over a parcel of land subject of Civil Case No. 00-5949. There is nothing in said special power of attorney authorizing Ester N. Valle to file the instant case.

On the issue of forum shopping, petitioner pointed out that the private respondents have previously filed two (2) other cases against different defendants claiming recovery of the same lot covered by Tax Declaration No. 04-5171. That is, on 17 October 2000, private respondents filed a Complaint<sup>[4]</sup> for reconveyance and damages against spouses Idefonso and Adoracion Losloso ("Spouses Losloso"), which was docketed as Civil Case No. 00-5949 before the RTC of Antipolo. In said case, private respondents alleged that they discovered that OCT No. 1706 was issued to the spouses Losloso pursuant to Free Patent No. 045813-98-3589 covering Lot 3082, Cad 688-D, Cainta-Taytay Cadastre. Subsequently, the said certificate of title was cancelled and TCT Nos. 652369 and 652370 were issued in lieu thereof, also in the names of the Spouses Losloso. Upon verification, it was determined that Lot 3082 cover portions of the land owned by the Heirs of Buenaventura Valle.

During the pendency of Civil Case No. 00-5949, private respondents, as represented by Nolina N. Valle, filed another Complaint<sup>[5]</sup> on 01 December 2004, this time for quieting of title against the Heirs of Flaviano Valera. Said case was docketed as Civil Case No. 04-7419 in the RTC of Antipolo. Private respondents alleged that their lot covered by TD No. 04-5171 has been divided into two parts – one part denominated as Lot 3081 declared in the name of Flaviano Valera, and the other part denominated as Lot 3082 declared in the name of Bienvenido Valle. Thus, the division of the property of the late Buenaventura Valle into Lots 3081 and 3082 appears to put some cloud on his and private respondents' title or interest over the aforesaid parcel of land.

Petitioner then filed a "Motion for a Preliminary Hearing of the Affirmative Defenses in the Answer which are Grounds for a Motion to Dismiss."<sup>[6]</sup>

By way of Comment/Objection<sup>[7]</sup> to the said motion, private respondents argued that the Heirs of Buenaventura Valle, as represented by Ester Valle, is authorized by law to be a party to a case. It has been ruled that the defendant's legal heirs are his legal representatives if there is no pending proceeding for the settlement of his estate. Moreover, Ester Valle can file the complaint without being joined by the rest of the heirs so long as the cause of action is for the benefit of all the co-heirs or co-owners. On the issue of forum shopping, private respondents claimed that they were never informed by Nolina Valle of Civil Case No. 04-7419 against the Heirs of Flaviano Valera, nor did they authorize Nolina Valle to file said case. It was only after Nolina Valle died that they learned about said case. Immediately thereafter, they filed a Motion to Withdraw<sup>[8]</sup> said complaint.

In an Order<sup>[9]</sup> dated 15 June 2010, respondent Judge, denied petitioner's Motion for a Preliminary Hearing of the Affirmative Defenses in the Answer. Pertinent portions thereof are hereunder quoted:

"In the exercise of sound discretion as provided for under Section 6 Rule 16 of the 1997 Rules on Civil Procedure, the Court hereby denies the said motion, considering that the plaintiffs were able to substantially rebut the alleged lack of legal capacity to sue and forum shopping in their comment/objection. Further, to set the Motion for a Preliminary Hearing of the Affirmative Defenses in the Answer which are Grounds for a Motion to Dismiss for hearing is hereby DENIED for lack of merit.

SO ORDERED.”

On 08 November 2012, petitioner filed a “*Motion to Dismiss the Case on the Ground of Forum Shopping and on the Ground of Plaintiffs’ (private respondents herein) Failure to Appear at the Pre-trial.*”<sup>[10]</sup> On the issue of forum shopping, petitioner reiterated that the private respondents had earlier filed two (2) other similar cases using the same justification in claiming ownership of the lot, *i.e.*, TD No. 04-5171. Anent her contention that the private respondents failed to appear at the pre-trial, petitioner argued when the case was set for initial pre-trial on 24 October 2012, private respondents’ counsel submitted a special power of attorney (SPA)<sup>[11]</sup> dated 23 October 2012 executed by Ester N. Valle, as a justification for the non-appearance of the rest of the plaintiffs. However, all the heirs of Buenaventura Valle should appear at the pre-trial pursuant to Section 4, Rule 18 of the Rules of Civil Procedure. Failure of all the heirs to appear at the pre-trial will cause the dismissal of the case pursuant to Section 5, Rule 18 of the same Rule. Moreover, Ester Valle has no authority to execute said SPA. As pointed out in her answer, Ester Valle does not even have the authority to file a case against her.

In their Comment/Opposition,<sup>[12]</sup> private respondents pointed out that the petitioner merely reiterated the grounds/issues that they had raised in their motion for hearing on affirmative defenses, which have already been resolved by the respondent Judge in her 15 June 2010 Order.

On 02 April 2013, respondent Judge issued the first assailed Order<sup>[13]</sup> disposing as follows:

“WHEREFORE, the instant Motion to Dismiss on the Ground of Forum-shopping and on the Ground of Failure to Appear at the Pre-trial is hereby DENIED for lack of merit.”

Respondent Judge ratiocinated that petitioner’s motion to dismiss based on forum shopping is actually a motion for reconsideration of the 15 June 2010 Order. Hence, the same was filed beyond the 15-day reglementary period. As to the alleged failure of the private respondents to appear at the pre-trial, the respondent Judge ruled that Ester N. Valle, being the representative of the real party-in-interest, may execute a special power of attorney appointing her lawyer to represent the Heirs of Buenaventura Valle in the pre-trial.

Petitioner moved for the reconsideration of the above order but the same was denied by the respondent Judge in the second assailed Order<sup>[14]</sup> dated 31 October 2013.

Aggrieved, petitioner filed the instant petition, contending that:

“[R]espondent judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying our ‘Motion to Dismiss The Case On the Ground Of Forum Shopping And On The Ground Of Plaintiff’s Failure to Appear At The Pre-trial’ and in denying as well our Motion For Reconsideration thereto.”<sup>[15]</sup>