

THIRD DIVISION

[CA-G.R. CV No. 100836, March 26, 2015]

**SPOUSES ERNESTO & AIDA MALLARI, PLAINTIFFS-APPELLANTS,
VS. JUN MIRANDA, DEFENDANT-APPELLEE.**

D E C I S I O N

REYES-CARPIO, A., J.:

Before this Court is an Appeal, seeking the reversal of the Order,^[1] dated November 22, 2012 of the Regional Trial Court Of Quezon City, Branch 97 in Civil Case No. Q-11-69908 entitled "Spouses Ernesto and Aida Mallari vs. Jun Miranda."

The instant case stemmed from a Complaint,^[2] dated September 6, 2011, filed by plaintiffs-appellants Spouses Mallari, alleging that they had previously filed an action for collection of sum of money against Japhill Construction Corporation and Spouses Domiciano and Carmelita Reyes before the Regional Trial Court of Bataan, Branch 1. Said case was decided in their favor whereby Japhill Construction Corporation and spouses Reyes were directed to pay a certain amount of money to plaintiffs-appellants but they failed to do so.

Accordingly, the RTC Branch Sheriff levied Transfer Certificate of Title No. NT-226485^[3] issued in the name of Spouses Reyes, covering a parcel of land located at Barangay Papaya, San Antonio, Nueva Ecija which was sold at a public auction, with plaintiffs-appellants as the highest bidders. Thus, a Certificate of Sale,^[4] dated September 16, 2003 was issued in their favor and annotated with the Register of Deeds of Nueva Ecija.

After the issuance of the Certificate of Sale, plaintiffs-appellants conducted a site inspection of the land and discovered that defendant-appellee Jun Miranda had been occupying the same. Consequently, plaintiffs-appellants instituted an action for recovery of possession and damages^[5] against defendant-appellee before the RTC Gapan, Nueva Ecija, Branch 87, docketed as Civil Case No. 2773 which was also decided in favor of plaintiffs-appellants in the following manner:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs-spouses Ernesto and Aida Mallari and against defendant Jun Miranda in the following manner:

- a) Ordering defendant Jun Miranda to peacefully surrender the material and actual possession of the 7.3 hectares lot located at Brgy. Papaya, San Antonio, Nueva Ecija and embraced in TCT No. NT-226485 of the Register of Deeds for the Province of Nueva Ecija; and,
- b) Dismissing the third-party complaint by defendant Jun

Miranda against Sps. Domiciano Reyes and Carmelita Pangan
for lack of merit.

SO ORDERED.”^[6]

Upon expiration of the one-year redemption period, plaintiffs-appellants demanded that defendant-appellee deliver the proceeds of the rice produced from the subject property^[7] but the latter refused to heed the demand, prompting plaintiffs-appellants to file the instant complaint for specific performance which sought the following reliefs:

“WHEREFORE, it is respectfully prayed for by the plaintiffs that, after trial, a favorable Decision be rendered by the Honorable Court as follows:

1. Directing the defendant to pay in favor of the plaintiffs the average of 5.5 Metric Tons of Average Gross Production (AGP) per hectare, times 7.3 hectares of the rice produced from the subject property conservatively estimated at Five Hundred Thousand Pesos (P500,000.00), counted from the year 2004 (as provided for in the second paragraph of Section 33, Rule 39).

Other reliefs just and equitable in the premises are likewise prayed for.”
^[8]

In response thereto, defendant-appellee sought the dismissal of the Complaint on the ground of forum-shopping,^[9] maintaining that the instant case and Civil Case No. 2773 involve the same issue, specifically the delivery of the produce of the subject property.^[10]

After considering the arguments of both parties, the trial court promulgated the appealed Order,^[11] dated November 22, 2012, which states, to wit:

“Finding similarity in the parties, subject matter and reliefs sought in this Complaint and in Civil Case No. 2773 which is still pending appeal, the Motion to Dismiss is hereby GRANTED. As prayed for, let Civil Case No. 11-69908 be DISMISSED.

SO ORDERED.”^[12]

Hence, this appeal, which raises the sole issue of whether or not plaintiffs-appellants are guilty of forum-shopping.

Plaintiffs-appellants argue that while they admit that the reliefs sought in both cases are similar, the cause of action in Civil Case No. 2773 was mainly for recovery of possession or delivery of the property itself pending redemption while the instant case only seeks the delivery of the fruits of the said property.

Defendant-appellee, on the other hand, alleges that Civil Case No. 2773 is still pending appeal before this Court thus, the instant case was filed by plaintiffs-appellants as a preemptive measure in the event that this Court reverses the ruling in Civil Case No. 2773.^[13]

In ***Heirs of Sotto vs. Palicte***,^[14] the Supreme Court ruled that the test to determine the existence of forum-shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum-shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights or causes of action; and (c) identity of relief sought.^[15]

Forum-shopping may be committed in three (3) ways, as held in ***Spouses Plaza vs. Lustiva***,^[16] viz:

"x x x. 1) through *litis pendentia* – filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) through *res judicata* – filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and **3) splitting of causes of action – filing multiple cases based on the same cause of action but with different prayers** – the ground to dismiss being either *litis pendentia* or *res judicata*." (Emphasis Ours)

A cause of action is the act or omission by which a party violates the right of another.^[17] Its essential elements are as follows: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for recovery of damages or other appropriate relief.^[18]

In Civil Case No. 2773, plaintiffs-appellants alleged that (1) they acquired the subject property with the right to possess the same; (2) defendant-appellee occupied the said property; and (3) defendant-appellee refused to surrender possession of the property and its fruits to plaintiffs-appellants. Meanwhile, in the complaint for specific performance, plaintiffs-appellants make the following allegations: (1) that they are the owners of the subject property; (2) defendant-appellee occupied the property; and (3) defendant-appellee refused to turn over the fruits of the property to plaintiffs-appellants.

There is identity of causes of action if the same evidence will sustain the second action and the principle applies even if the relief sought in the two cases may be different.^[19]

In Civil Case No. 2773, plaintiffs-appellants sought the following reliefs:

"WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court, that after notice and hearing, judgment be rendered in favor of the plaintiffs and against the defendant, in the following manner:

- a. Order the defendant and any and all other persons claiming rights under him to vacate and surrender possession of the 73,673 square-meter ricefield under TCT No. NT-226485, to the plaintiffs or their counsel or to authorized representative;