

TWENTY-THIRD DIVISION

[CA-G.R. SP NO. 05231, January 23, 2014]

MRS. EDITHA D. FLORES, PETITIONER, VS. HON. DAX GONZAGA XENOS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 34, PANABO CITY, DAVAO DEL NORTE, AND MRS. PRUDENCIA FLORES A.K.A. PRUDENCIA BRANZUELA, RESPONDENTS.

D E C I S I O N

LLOREN, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court assailing the Order^[1] dated July 31, 2012 of the Regional Trial Court, 11th Judicial Region, Branch 34, Panabo City, dismissing the complaint in Civil Case No. CC 31 – 2012 without prejudice. Likewise assailed is the Order^[2] dated September 24, 2012 of the trial court denying the motion for reconsideration of the earlier order.

On June 29, 2012, Mrs. Editha D. Flores (petitioner) filed a Complaint^[3] for Specific Performance, Notice of Lis Pendens, Damages, Attorney's Fees against Mrs. Prudencia Flores a.k.a. Prudencia Branzuela (respondent). Petitioner pertinently alleged the following:

2. That on October 30, 1980, Danilo Flores (now deceased) and I had gotten married, and we lived as husband and wife at Gredu, Panabo, Davao del Norte, Philippines together with my husband's parents, spouses Eulogio Flores and Maria Flores, who both died in Gredu, Panabo in 1989 and in 1982, respectively. x x x

x x x

4. On November 4, 1981, our first child named Raymund Flores was born. x x x

5. On October 4, 1982, our second child named Mary Gay Flores was likewise born. x x x

6. On October 24, 1983, my husband, DANILO FLORES, had died in a vehicular accident in Panabo, Davao del Norte. x x x

7. In 1985, the purported second wife of my father-in-law in the person of Prudencia Flores, a.k.a. Prudencia Branzuela, the defendant, lived together with us in the house. x x x

x x x

9. That at the time my parents'-in-law (sic), spouses EULOGIO FLORES AND MARIA FLORES had passed away, they owned a parcel of land located at

Poblacion Panabo which had been registered in their names, consisting of more than seven (7) hectares with OCT No. P-14871 and Tax Declaration No. 2230, x x x.

10. That I have been asking defendant for the owner's-copy (sic) of the Land Title of the afore-cited parcel of land, but defendant neither confirm nor deny that the owner's copy has been in her possession and custody.

11. That on March 13, 2012, plaintiff's counsel sent a demand letter, dated March 09, 2012 to defendant through registered mail, enjoining defendant to produce the owner's copy, but until now the demand letter remains unanswered, x x x.
[4]

In the first assailed order, the trial court dismissed the complaint without prejudice.

Petitioner filed a Motion for Reconsideration^[5] whereby she argued that the trial court could not dismiss the case motu proprio without having first summoned respondent to answer the complaint. She claimed that she has a cause of action against respondent. She pointed out that she and her children have rights by succession to the subject land. Also, she pointed out that she received an information that respondent has in the latter's possession the title to the subject land.

In the second assailed order, the trial court denied the motion for reconsideration. It ruled that it could motu proprio dismiss outright the complaint citing *Velarde v. Social Justice Society*.^[6] It also ruled that the complaint fails to state a cause of action. It pointed out that petitioner, not being a legal heir of the registered owners, does not have a right to demand the return of the title. It also pointed out that respondent has no corresponding obligation to return the title considering that it was not categorically shown that she is in possession thereof.

Petitioner now comes before this Court ascribing grave abuse of discretion on public respondent for issuing the assailed orders.

The petition must be denied.

An appeal may be taken from a judgment or final order that completely disposes of the case. On the other hand, an order dismissing an action without prejudice is not appealable. The aggrieved party, however, may file an appropriate special civil action under Rule 65.^[7] Undoubtedly, petitioner has availed of the correct remedy since the dismissal of her complaint is without prejudice. Thus, the remaining question is whether public respondent had acted with grave abuse of discretion.

Petitioner claims that while Rule 16 of the Rules of Court lists the failure of a pleading to state a cause of action as a ground for dismissal of an action, a motion to dismiss must be filed by the defendant who must first be summoned to answer the complaint. She also claims that after receipt of the summons, the defendant is however precluded from filing a motion to dismiss in line with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002. She cites A.M. No. 03-1-09-SC which in part reads:

1. Within one day from receipt of the complaint: