

## NINTH DIVISION

[ CA-G.R. SP No. 111733, April 30, 2014 ]

**THE ESTATE/HEIRS OF DONATO CRUZ, CONSOLACION CRUZ-CONSTANTINO AND LINA CRUZ-MERCADO,<sup>[\*]</sup> PETITIONERS VS. HON. WILFREDO T. NIEVES, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, CITY OF MALOLOS, BULACAN, BRANCH 84, HEIRS OF VICENTA A. BARRETO-LLAMOSA, HEIRS OF JOSE CRUZ DE JESUS, HEIR OF GREGORIA AURORA A. BARRETO-BANDINO, RESPONDENTS.**

### DECISION

**GARCIA-FERNANDEZ, M.V., J.:**

This is a petition for certiorari under Rule 65 of the Revised Rules of Court, as amended, filed by the estate/heirs of Donato Cruz, Consolacion Cruz-Constantino and Lina Cruz Mercado seeking to annul and set aside the order of public respondent Judge Wilfredo T. Nieves, of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 84, on October 5, 2009<sup>[1]</sup> in Civil Case No. 284-M-2007, which allowed the continuation of proceedings with respect to the complaints-in-intervention despite the withdrawal of the original complaint.

Celso Barreto and Rosario Barreto-Cruz were husband and wife. Celso died intestate on April 5, 1997 while Rosario also died intestate on March 18, 2005. They had no children but they allegedly left several real and personal properties in possession of Rosario's nephews and nieces namely, Consolacion Cruz-Constantino, Armando "Ding" Cruz, Rosendo Cruz, Yolanda Cruz and Lina Cruz-Mercado (defendants).<sup>[2]</sup>

On May 18, 2007, Rosario's sister Victoria Cruz-Roxas (Victoria), through her attorney-in-fact, Gaspar C. Roxas, filed a complaint<sup>[3]</sup> for partition, reconveyance, accounting and damages against the defendants in the RTC, Malolos, Bulacan. The complaint was raffled to Branch 84, presided by public respondent Judge Nieves. Victoria claimed that she is one of the heirs of Rosario Cruz-Barreto and entitled to a share in the latter's estate which was in possession of the children of Donato Cruz; that she demanded partition and accounting of the properties of Rosario, but the children of Donato Cruz did not heed the demand; that she suffered sleepless nights, anxiety, moral shock and besmirched reputation that warrants the award of moral damages.

Meanwhile, the private respondents, heirs of Vicenta A. Barreto-Llamosa, who claimed to be the heirs of Rosario's husband, Celso Barreto, filed a motion for intervention on August 2, 2007.<sup>[4]</sup> Defendants opposed the motion asserting that the heirs of Vicenta Barreto-Llamosa are not parties-in-interest; that the movants' alleged interest is not direct and immediate but only contingent, hence, insufficient to justify the intervention; that the intervention will alter the nature of the action

and the issues in that case and will further delay or prejudice the adjudication of the rights of the original parties; and that their claim may be properly decided in a separate proceedings.<sup>[5]</sup>

On November 7, 2007, respondent judge issued an order<sup>[6]</sup> granting the motion for intervention and admitting the complaint-in-intervention, and further requiring defendants to file an answer-in-intervention within fifteen (15) days from notice.

Private respondents, heirs of Jose Cruz De Jesus<sup>[7]</sup> and the heir of Gregorio Aurora A. Bandino<sup>[8]</sup> also filed separate motions for intervention and complaints-in-intervention.<sup>[9]</sup> On the other hand, the complaint filed by Victoria Cruz-Roxas was also amended to include the intestate estate of the spouses Celso Barreto and Rosario Cruz-Barreto,<sup>[10]</sup> and the estate of Donato Cruz,<sup>[11]</sup> as defendants.

Defendants in their answer denied the allegations in the amended complaints of Victoria Cruz-Roxas, and the complaints-in-intervention. They averred that the intestate estate of Celso Barreto had already been settled extrajudicially by Rosario Cruz-Barreto and by Celso's nephews and nieces, wherein the latter already waived their rights over Celso's estate in favor of Rosario; that as a result of the extrajudicial settlement, Rosario acquired full ownership of the entire estate; that during the lifetime of Rosario, she donated all her properties to his brother Donato Cruz, hence, Rosario left no properties for settlement; that the ownership of the properties donated to Donato became part of his estate and passed on to defendants as their inheritance; that there is no longer any property to be settled or partitioned, thus, the complaint should be dismissed for lack of cause of action.<sup>[12]</sup>

After the pre-trial, counsel for the plaintiff Victoria Cruz-Roxas withdrew his appearance due to the plaintiff's lack of interest to prosecute the case,<sup>[13]</sup> followed by a motion to withdraw complaint<sup>[14]</sup> filed by the plaintiff. Intervenors interposed no objection to the withdrawal of the plaintiff's complaint, but asserted that the withdrawal cannot affect their cause of action against the defendants, but only operates as waiver of rights over the properties by the plaintiffs; and that the complaints-in-intervention will survive despite the withdrawal or dismissal of the main action.<sup>[15]</sup> Defendants did not also object to the withdrawal of the plaintiff but contended that the withdrawal of the original complaint would result in the dismissal of the complaints-in-intervention.<sup>[16]</sup>

On June 23, 2009, respondent judge granted the motion to account and deposit rentals and directed the defendants to render an accounting of the income, as well as, the expenses for the maintenance of properties and to deposit the excess amount in court pending resolution of the case.<sup>[17]</sup>

On October 9, 2009, respondent judge issued the assailed order granting the motion to withdraw the complaint but allowing the complaints-in-intervention to proceed. Respondent judge held that the dismissal of the plaintiff's action would not affect the intervenors' complaints that had already been admitted by the court; that the allowance of the intervention would completely settle the claims of the alleged heirs and will preclude a possible multiplicity of suits if the intervenors would be required to pursue their cause in a separate case. Thus:

WHEREFORE, finding merit in the motion at bench, the same is granted and the plaintiff's complaint is dismissed. On the other hand, the complaints-in-intervention are allowed to proceed. Let this case proceed with the presentation of intervenors' evidence on October 6, 2009, as previously scheduled.

Record shows that defendants have not submitted their compliance with the Order dated June 23, 2009, thus, they (defendants) are given five (5) days from receipt hereof to comply therewith and to explain within the same period their failure to do so when so directed.

SO ORDERED.

Hence, this petition for *certiorari* filed by the heirs of Donato Cruz, Consolacion Cruz-Constantino, Armando R. Cruz, Heirs of Rosendo R. Cruz, Yolanda R. Cruz and Lina Cruz-Mercado. Noting that only Consolacion Cruz-Constantino and Lina Cruz-Mercado signed the verification and certification of non-forum shopping, this Court directed the petitioners to submit a special power of attorney in favor of Consolacion and Lina.<sup>[18]</sup> When petitioners failed to submit the required special power of attorney, this Court dropped Armando R. Cruz, the heirs of Rosendo R. Cruz and Yolanda R. Cruz as co-petitioners in this case.<sup>[19]</sup>

Petitioners cite their grounds of the petition, to wit:

1. THE PUBLIC RESPONDENT GRAVELY ABUSED ITS (sic) DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ALLOWING THE COMPLAINTS-IN-INTERVENTION OF PRIVATE RESPONDENTS TO PROCEED DESPITE DISMISSAL OF THE COMPLAINT UPON PLAINTIFF'S MOTION TO WITHDRAW;
2. THE PUBLIC RESPONDENT GRAVELY ABUSED ITS (sic) DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REQUIRING COMPLIANCE WITH THE ORDER FOR ACCOUNTING AND DEPOSIT OF RENTALS DESPITE DISMISSAL OF THE MAIN ACTION;
3. THERE IS NO APPEAL, NOR ANY PLAINT (sic), SPEEDY AND ADEQUATE REMEDY IN THE COURSE OF LAW.<sup>[20]</sup>

This Court will deal first with the procedural issue. Unmistakably, before a petition for *certiorari* can prosper, the petitioners must be able to show, among others, that they do not have any plain, speedy and adequate remedy in the ordinary course of law. This remedy is referred to in Section 1 of Rule 65 as a motion for reconsideration of the questioned order.<sup>[21]</sup>

In the case of petitioners, the remedy of motion for reconsideration was still available to them when they filed the instant petition for *certiorari*. Yet, they did not avail this remedy and instead elevated the orders of the RTC to this Court via petition for *certiorari*. This procedural faux pas warrants the outright dismissal of the petition.

Even if this Court were to decide on the merits, no cogent reason exists to annul and set aside the assailed order of the RTC.

Petitioners assert that the complaint-in-intervention is merely ancillary to the main action. Citing *J.M. Tuason and Co., Inc. v. Hon. Torres*,<sup>[22]</sup> *Barangay Matictic v. Hon. J.M. Elbinias*<sup>[23]</sup> and *Asian Terminals, Inc. v. Hon. Ricafort*,<sup>[24]</sup> they allege that the dismissal of the main action, upon motion of the plaintiff, necessarily results in the dismissal of the complaints-in-intervention.

Indeed, jurisprudence is trite with rulings that an intervention is merely ancillary and supplemental to the existing litigation and never an independent action. It is regarded as collateral or accessory or ancillary to the principal action and not an independent proceeding. It is an interlocutory proceeding dependent on and subsidiary to, the case between the original parties.<sup>[25]</sup> As such, the final dismissal of the main case necessarily includes dismissal of the intervention.

In this case, however, there is no final dismissal of the case in the RTC. The order on October 5, 2009 which granted the motion to withdraw by the plaintiff certainly did not result in the dismissal of the complaints-in-intervention that had been admitted by the trial court, thus:

[T]he joint motion of therein plaintiff and the original defendants to dismiss the case, without notice to and consent of the intervenor, has the effect of putting to rest only the respective claims of the said original parties inter se but the same cannot in any way affect the claim of private respondent which was allowed by the court to intervene without opposition from the original parties.<sup>[26]</sup>

This Court agrees with the RTC that the withdrawal of the complaint by the plaintiff only affected her claim against the petitioners, but cannot in any way affect private respondents' intervention. *Metropolitan Bank & Trust Company v. Presiding Judge of RTC, Manila*,<sup>[27]</sup> is instructive, viz.:

Any person who has or claims an interest in the matter in litigation, in the success of either of the parties to an action, or against both, may intervene in such action, and when he has become a party thereto it is error for the court to dismiss the action, including the intervention suit on the basis of an agreement between the original parties to the action. Any settlement made by the plaintiff and the defendant is necessarily ineffective unless the intervenor is a party to it.

By the very definition of "intervention," the intervenor is a party to the action as the original parties and to make his right effectual he must necessarily have the same power as the original parties, subject to the authority of the court reasonably to control the proceedings in the case.

Having been permitted to become a party in order to better protect his interests, an intervenor is entitled to have the issues raised between him and the original parties tried and determined. He had submitted himself and his cause of action to the jurisdiction of the court and was entitled to relief as though he were himself a party in the action.

After the intervenor has appeared in the action, the plaintiff has no absolute right to put the intervenor out of court by the dismissal of the