

THIRD DIVISION

[CA-G.R. SP No. 130885, May 27, 2014]

MAYTAN ESTATE COMPANY REPRESENTED BY CORNELIO G. DE GUZMAN, PETITIONER, VS. REGIONAL TRIAL COURT OF PASIG CITY[*], BRANCH 266 AND FERDINAND P. LOPEZ, RESPONDENTS.

DECISION

GARCIA, R.R., J.:

Before Us is a Petition for Certiorari and Mandamus^[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Order^[2] dated July 12, 2013, of the Regional Trial Court, Branch 266, Pasig City in Civil Case No. 73770-TG which denied petitioner Maytan Estate Company's motion for the dismissal of the complaint on the ground of lack of jurisdiction.

THE FACTS

The instant case stemmed from a Complaint^[3] for Judicial Confirmation of Rescission of Contract, Accounting and Damages with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction filed by Ferdinand Lopez against Spouses Bonifacio and Gliceria Regalado. It was alleged that Lopez purchased four (4) parcels of land with an aggregate area of 8,046 square meters situated at Cubao, Quezon City from spouses Regalado through separate Deeds of Sale dated September 30, 1997^[4], October 1, 1997^[5] and October 3, 1997^[6], respectively.

Thereafter, a Contract of Lease^[7] dated March 25, 1998 was executed by the parties where it was agreed that spouses Regalado would lease the property for a period of sixteen (16) years for a monthly rental of P150,000.00. It was also provided that spouses Regalado would pay the real estate taxes thereon for the duration of the contract. It was further stipulated that the certificates of title to the property will remain in the names of spouses Regalado and that they will not mortgage or sell the same.

Sometime in December 2012, Lopez discovered that his property was sold by the local government of Quezon City to Quintessence Realty Corporation, represented by Cornelio de Guzman, in a public auction held on July 2, 2009 due to non-payment of real estate taxes from 1996-2009 in the total amount of P4,859,668.36.

Later, upon verification of the status of the property with the Office of the City Treasurer of Quezon City, Lopez found out that the property has already been redeemed by spouses Regalado on March 26, 2010, as shown by the four (4) separate Certificates of Redemption^[8] all dated August 27, 2010.

On January 17, 2013, Lopez, through counsel, sent a letter^[9] terminating the contract of lease with spouses Regalado and demanding the surrender of the transfer certificates of title of the property but to no avail. Consequently, Lopez executed a Special Power of Attorney^[10] in favor of Marlon Martija, authorizing the latter to file a complaint against spouses Regalado on his behalf.

Hence, the instant complaint for rescission of contract, accounting and damages which prayed that: (a) the Contract of Lease dated March 25, 1998 be rescinded; (b) spouses Regalado be ordered to surrender the transfer certificates of title covering the property in his favor and to render an accounting of the monthly income of the property; (c) the issuance of a temporary restraining order against spouses Regalado and/or other persons claiming rights under them; and (d) payment of moral and exemplary damages and attorney's fees of P200,000.00 each.

Gliceria Regalado, through counsel, filed a Motion to Dismiss^[11] dated February 5, 2013 on the ground that the court *a quo* has no jurisdiction over the person of Bonifacio Regalado who died on April 17, 2009 as shown in his death certificate.

Meanwhile, on March 4, 2013, petitioner Maytan Estate Company filed its Motion to Intervene^[12] attaching thereto an Answer-in-Intervention^[13] alleging that it has ownership and possessory claims over the property. In a Contract of Lease^[14] dated November 7, 2003, spouses Regalado leased the property to petitioner for a period of twenty-five (25) years until November 30, 2028. Almost three (3) years thereafter, spouses Regalado sold the property to petitioner for and in consideration of the amount of P10,000,000.00 through a Deed of Absolute Sale^[15] dated August 18, 2006.

In an Order^[16] dated June 20, 2013, the court *a quo* denied the Motion to Dismiss filed by spouses Regalado while it admitted the Answer-in-Intervention filed by petitioner. Lopez' application for a temporary restraining order was also granted thereby enjoining spouses Regalado and any of their heirs, assigns and those claiming rights under them from disposing the property. However, the issuance of the temporary restraining order was conditioned upon Lopez' posting of a bond in the amount of P500,000.00. The dispositive portion of the said Order is quoted:

WHEREFORE, the motion to dismiss of the defendants is hereby **DENIED** for lack of merit. The Motion to Intervene of Maytan Estate Company is **GRANTED** and its Answer-in-Intervention is **ADMITTED**. Further, the application for a temporary restraining order of plaintiff is **GRANTED**. The defendants and any of their heirs, assigns, agents, and those claiming rights under them are enjoined from disposing the subject properties, conditioned upon plaintiff;s posting of a security in the form of a bond in the amount of **FIVE HUNDRED THOUSAND (P500,000.00) PESOS**, to answer for any damage that may be caused to the defendants and their privies by reason of the restraining order.

xxx

SO ORDERED.^[17]

Petitioner filed a Motion for Preliminary Hearing on Affirmative Defenses^[18] alleging that the suit is a real action, thus, the proper filing fees must be paid before the

court can acquire jurisdiction. Also, the complaint was defective because the verification and certification against forum shopping was signed by Atty. Marlon Martija for himself and not as attorney-in-fact of Lopez, the real plaintiff.

In an Order^[19] dated July 12, 2013, the court *a quo* denied petitioner's prayer for the dismissal of the action on the ground of lack of jurisdiction ratiocinating that the suit is a personal action since its primary objective is the rescission of the contract of lease. As a result, jurisdiction was properly laid within the competence of the court *a quo*. Further, Lopez failed to repudiate the alleged unauthorized act of his agent and even insisted that the act of Atty. Martija in signing the Verification and Certification against Forum Shopping was necessary to carry out the purpose of the agency. The pertinent portions of the said Order are quoted:

After a judicious scrutiny of the records and the arguments of intervenor and plaintiff, this Court is disinclined to yield to the prayer of the intervenor for the dismissal of this case.

A careful perusal of the Amended Complaint of plaintiff shows that his primary objective is for rescission of the lease contract. Thus, his case is a personal action, the jurisdiction and venue of which was properly laid within the competence of this Court. There is, thus, no basis to dismiss this case for failure to pay the correct docket fee for what intervenor mistakenly insisted to be a real action.

Moreover, while it is true that the non-compliance with or a defect in a certificate of non-forum shopping and verification is not curable by their subsequent submission or correction, the rule admits exceptions. There is a need to relax said Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons". xxx

In the case at bar, the Special Power of Attorney executed by plaintiff Lopez as principal authorized Martija to act on his behalf by filing and submitting pleadings and documents in relation to the Complaint for Ejectment, Accounting and Damages against Spouses Bonifacio Castillo Regalado before the Metropolitan Trial Court of Quezon City xxx". While it clearly shows that Martija's authority is limited to filing a complaint for ejectment, accounting and damages before the Metropolitan Trial Court of Quezon City, plaintiff Lopez had acquiesced and ratified Martija's act of filing the instant case for rescission of contract, accounting and damages before the Regional Trial Court as shown by his failure to repudiate the alleged unauthorized act of his agent, and by the fact that in his Comment/Opposition, he insisted that his agent's act of filing this case and signing the Verification and Certification Against Forum Shopping was conducive to the accomplishment of the purpose of the agency and was performed in a manner more advantageous to [the] him as principal. A relaxation of the rules is warranted as it appears that there was "substantial compliance" with the requirements of verification and certification against forum shopping.

WHEREFORE, the prayer for the dismissal of the case by intervenor Maytan Estate Company for lack of jurisdiction and defect of the Amended Complaint is DENIED for lack or merit .

SO ORDERED.^[20]

Hence, the instant petition for certiorari, raising the following **assignment of errors**^[21], to wit:

I.

THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION WHEN IT DENIED THE MOTION TO DISMISS FILED BY DEFENDANT REGALADO ON THE GROUND OF LACK OF JURISDICTION OVER THE DECEASED DEFENDANT BONIFACIO REGALADO WHO HAS NO MORE CIVIL PERSONALITY TO SPEAK OF.

II.

THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION WHEN IT REFUSED TO DISMISS THE AMENDED COMPLAINT WHEN THE SAME CLEARLY APPEARS TO HAVE BEEN FILED WITHOUT OR IN EXCESS OF THE WRITTEN AUTHORITY (SPA) AND THE ATTORNEY-IN-FACT HAS NO AUTHORITY TO EXECUTE A CERTIFICATE AGAINST FORUM SHOPPING.

THE ISSUE

The pivotal issue to be resolved is whether or not the court *a quo* committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion to dismiss filed by defendants spouses Regalado and in admitting the complaint filed by Lopez despite the alleged defective certification of non-forum shopping.

THE RULING

At the outset, it must be pointed out that the assailed orders of the court *a quo*, namely: the Order dated June 20, 2013 denying the motion to dismiss filed by respondent Gliceria Regalado and the Order dated July 12, 2013 denying petitioner's prayer for the dismissal of the complaint, are but resolutions on incidental matters which do not touch on the merits of the case or put an end to the proceedings. They are in the nature of interlocutory orders since there leave something else to be done by the court *a quo* with respect to the merits of the case.

Ordinarily, the remedy against an interlocutory order is not to resort forthwith to certiorari, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. The special civil action of certiorari under Rule 65 may exceptionally be allowed as an appropriate remedy to assail an interlocutory order when (1) the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion, and (2) the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.^[22] No such special circumstances are present in the instant case.

Even assuming that certiorari is the proper remedy, the court *a quo* did not commit grave abuse of discretion in issuing the Order dated June 20, 2013 and the Order dated July 12, 2013.

Petitioner contends that the complaint should have been dismissed on the ground of lack of jurisdiction over the person of Bonifacio Regalado, one of the impleaded defendants, considering that he was already dead more than four (4) years before the instant complaint was filed against him.

We do not agree.

Jurisdiction over a party is acquired by service of summons by the sheriff, his deputy or other proper court officer, either personally by handing a copy thereof to the defendant or by substituted service or by extra-territorial service thereof or by his voluntary personal appearance before the court or through counsel. On the other hand, summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court may acquire jurisdiction over his person.^[23]

The issue of whether the complaint is dismissible on account of the death of one of the defendants even before the the complaint was filed has been resolved in the case of *Sarsaba vs. Vda. De Te*^[24]. In that case, a complaint for recovery of motor vehicle and damages was filed against Sarsaba, Sereno, and the NLRC sheriff by the owner of the truck. Sarsaba filed a motion to dismiss on the ground of lack of jurisdiction over the person of Sereno since he was already dead when the complaint was filed. The Supreme Court ruled that failure to serve summons upon a deceased person will not be a cause for the dismissal of the complaint against the other defendants, considering that the latter have been served with copies of the summons and complaint. Further, the defense of lack of jurisdiction over the defendant is personal to the person claiming it. Sarsaba cannot invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. We quote:

In the case before Us, petitioner raises the issue of lack of jurisdiction over the person of Sereno, not in his Motion to Dismiss or in his Answer but only in his Omnibus Motion to Dismiss. Having failed to invoke this ground at the proper time, that is, in a motion to dismiss, petitioner cannot raise it now for the first time on appeal.

In fine, **We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno.** The court's **failure to acquire jurisdiction over one's person** is a **defense** which is **personal to the person claiming it**. Obviously, it is now impossible for Sereno to invoke the same in view of his death. **Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants,** considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants in the complaint were given the chance to raise all possible defenses and objections personal to them in their respective motions to dismiss and their subsequent answers.