

## THIRD DIVISION

[ CA-G.R. SP NO. 130103, June 11, 2014 ]

**MAGDALENA BLAZA, REYNALDO B. CHOA, MARIA LOURDES C. RAMOS, JOINED BY HER HUSBAND NORBERTO RAMOS, EVANGELINE C. FIGUERRES, JOINED BY HER HUSBAND CARLOS FIGUERRES, HELEN C. GO, JOINED BY HER HUSBAND ROBERTO GO, JACQUELINE C. FABIAN, JOINED BY HER HUSBAND ARIEL FABIAN, AND CATHERINE C. FRANCO, JOINED BY HER HUSBAND KEVIN FRANCO, PETITIONERS, V. HON. ROLINE M. GINEZ-JABALDE, AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 74, OLONGAPO CITY, HON. JOSEFINA D. FARRALES, AS THEN ACTING PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 74, OLONGAPO CITY, RIZALINA FAMILARA-CHOA, AND JOHN FAMILARA CHOA, JOINED BY HIS WIFE TETCHIE TESORO-CHOA, RESPONDENTS.**

### D E C I S I O N

**DE GUIA-SALVADOR, R., J.:**

Filed pursuant to Rule 65, the instant Petition for Certiorari<sup>[1]</sup> seeks to nullify and set aside the Order<sup>[2]</sup> dated January 21, 2013 issued by public respondent judge, the Hon. Josefina D. Farrales, of the Regional Trial Court of Olongapo City, Branch 74 (***RTC Branch 74***), denying the Motion for Summary Dismissal with Prejudice of Counterclaims<sup>[3]</sup> filed by the Petitioners Magdalena Blaza, et al., as well as the Order<sup>[4]</sup> dated April 3, 2013 denying the Motion for Reconsideration thereof. The dispositive portion of the Order dated January 21, 2013, reads as follows:

“Considering that there are other issues raised by the defendants in their counterclaims aside from the prayer for the surrender of title and considering further that there is no sufficient showing that the action instituted by the defendants in filing Other Case No. 09-0-12 clearly constitutes willful and deliberate forum shopping, the motion is DENIED.

xxx xxx xxx

SO ORDERED.”<sup>[5]</sup>

### ***The Facts***

Sometime in 1968, petitioner Magdalena Blaza (***Magdalena***) and her husband, Choa Gue, purchased a house and lot located at 101 Law St. (now Gordon Avenue), Olongapo City (***subject properties***) from Emilio Gonzales and Virginia De Guia. Due to certain legal obstacles which prevent them from acquiring a real property, such as Choa Gue's Chinese citizenship and the minority of their other illegitimate children, the couple caused the subject properties to be registered in the name of their eldest illegitimate child, Johnny Choa (***Johnny***), under Katibayan ng Orihinal

na Titulo Bilang P-12711 (**KOT Blg. P-12711**) subject to an implied trust. Pursuant to the arrangement, the owner's duplicate original copy of KOT Blg. P-12711 remained in the possession of co-petitioner Reynaldo Choa (**Reynaldo**)- Johnny's brother.<sup>[6]</sup>

On January 6, 2011, Johnny died. Forthwith, private respondents Rizalina Familiar-Choa (**Rizalina**) and John Choa (**John**), Johnny's wife and son, respectively, claimed ownership of the subject properties.<sup>[7]</sup>

To dispute respondents' claimed ownership of the subject properties, on April 8, 2011, the petitioners filed before the RTC Branch 74 a complaint for Reconveyance, Partition, Injunction and Damages with Prayer for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order, docketed as Civil Case No. 49-O-2011, against the respondents Rizalina and John.

On June 14, 2011, respondents filed their Answer with Affirmative Defenses and Counterclaims,<sup>[8]</sup> vehemently denying the existence of an implied trust between Johnny and the petitioners, and insists that Johnny purchased the property in good faith and for value and as such is the sole and beneficial owner of the subject properties. Rizalina asserted that Reynaldo took the original owner's copy of KOT Blg. P-12711 while Johnny was then confined in the hospital.<sup>[9]</sup> As counterclaim, the respondents prayed that the petitioners be ordered thus: (i) to surrender the original owner's copy of KOT Blg. P-12711; (ii) to account for the bank deposits of Johnny, as well as his shares and dividends at the Subic Bay Hotelilors Corporation; and (iii) to pay moral damages and litigation expenses.<sup>[10]</sup>

Meanwhile, on March 28, 2012, Rizalina filed a Petition for the Reconstitution of KOT Blg. P-12711<sup>[11]</sup> with the Regional Trial Court of Olongapo City, Branch 75 (**RTC Branch 75**). Docketed as Other Case No. 09-O-2012, the Petition alleged that during Johnny's lifetime, he entrusted to Rizalina the owner's copy of KOT Blg. P-12711, which she kept in a cabinet inside their house. However, after her husband's death, she discovered that the owner's copy thereof was missing. Thus, she prayed that a decision be rendered declaring the lost owner's copy of KOT Blg. P-12711 null and void and ordering the Register of Deeds to issue a replacement title in lieu of the lost one.<sup>[12]</sup>

On June 7, 2012, Reynaldo filed a Motion for Intervention<sup>[13]</sup> in Other Case No. 09-O-2012, asserting that the properties subject of the case are the same properties being litigated in Civil Case No. 49-O-2011, which he filed along with six other plaintiffs. RTC Branch 75 granted the Motion for Intervention in its Order dated July 10, 2012.<sup>[14]</sup>

On August 10, 2012, Reynaldo filed a Motion to Dismiss<sup>[15]</sup> in Other Case No. 09-O-2012, contending that contrary to Rizalina's claim, the owner's duplicate copy of KOT Blg. P-12711 was not missing but was actually in the possession of Reynaldo and such fact was known to Rizalina.

On even date, Reynaldo and his co-petitioners likewise filed a Motion for Summary Dismissal with Prejudice of Counterclaims<sup>[16]</sup> in Civil Case No. 49-O-2011, alleging that Rizalina committed forum shopping by instituting Other Case No. 09-O-2012 notwithstanding the pendency of Civil Case No. 49-O-2011. They pointed out that in their Answer with Affirmative Defenses and Counterclaims they filed in the latter

case, Rizalina and John sought for the surrender of the original owner's copy of KOT Blg. P-12711. This counterclaim notwithstanding, Rizalina went on to file a Petition for Reconstitution of KOT Blg. P-12711 on the pre-text that the owner's copy thereof was missing, and sought for the issuance of a replacement.<sup>[17]</sup> Petitioners argue that the filing of such petition constituted a willful and deliberate act of forum shopping that warrants the summary dismissal with prejudice of the counterclaim in Civil Case No. 49-O-2011.<sup>[18]</sup>

The Motion to Dismiss in Other Case No. 09-O-2012 was granted by the RTC Branch 75<sup>[19]</sup> after finding that KOT Blg. P-12711 was not missing but was actually in the possession of Reynaldo, and that the properties subject thereof are the same properties involved in Civil Case No. 49-O-2011. On the other hand, the Motion to Dismiss filed in Civil Case No. 49-O-2011 was denied by RTC Branch 74 in its Order dated January 21, 2013 upon its finding that respondents did not commit forum shopping.<sup>[20]</sup>

Aggrieved, the petitioners filed a Motion for Reconsideration<sup>[21]</sup> which the RTC Branch 74 denied in its Order<sup>[22]</sup> dated April 3, 2013.

### ***The Issues***

Undeterred, petitioners timely filed the instant Petition for Certiorari,<sup>[23]</sup> seeking to nullify and set aside the assailed Orders,<sup>[24]</sup> upon an affirmative ruling on the following issues, *to wit*:

**I. "WHETHER OR NOT WILLFUL AND DELIBERATE FORUM-SHOPPING WAS COMMITTED BY RESPONDENT RIZALINA FAMILARA-CHOA IN FILING OTHER CASE NO. 09-O-12 WHEREIN SHE ALLEGED THAT KATIBAYAN NG ORIGINAL NA TITULO BLG. P-12711 IS "LOST"?"**

**II. WHETHER OR NOT THE COUNTERCLAIMS IN CIVIL CASE NO. 49-O-11 SHOULD BE SUMMARILY DISMISSED WITH PREJUDICE?"**

<sup>[25]</sup>

### ***The Court's Ruling***

We find the instant petition devoid of merit.

"Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition."<sup>[26]</sup> Put differently, forum shopping exists when a party repeatedly avails himself of several remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.<sup>[27]</sup> In determining whether a party violated the rule against forum shopping, the most important consideration is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.<sup>[28]</sup> Correlatively, *litis pendentia* as a ground for the dismissal of a civil action refers to a situation wherein another action is pending between the same parties for the same cause of action, such that the second action