

## FOURTEENTH DIVISION

[ CA-G.R. SP NO. 79627, September 27, 2006 ]

**RAQUEL G. DY BUNCIO, PETITIONER, VS. HON. RODRIGO S. CASPILLO, IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH 24 OF THE REGIONAL TRIAL COURT OF CABANATUAN CITY, AND ANGELITO G. BERNARDO, RESPONDENTS.**

### DECISION

**VIDAL, M.D., J.:**

In this Petition for Certiorari under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction, Petitioner RAQUEL G. DY BUNCIO seeks the nullification of the Orders dated 21 May 2003<sup>1</sup> and 29 July 2003<sup>2</sup> of the Regional Trial Court (RTC), Third Judicial Region, of Branch 24, Cabanatuan City, in Civil Case No. 4401-AF entitled *Angelito G. Bernardo vs. Raquel G. Dy Buncio for Cancellation, Recovery of Titles*.

### THE FACTS

On 2 December 2002, Respondent ANGELITO G. BERNARDO (hereinafter Respondent) filed before the RTC a complaint<sup>3</sup> against Petitioner RAQUEL G. DY BUNCIO (hereinafter Petitioner) alleging that the Petitioner and Respondent are both compulsory heirs of the deceased LUZ DE GUZMAN who died intestate on 13 March 1983 and that the Respondent is the surviving heir of LUZ DE GUZMAN's deceased sister, ENRICA DE GUZMAN BERNARDO while the Petitioner is the daughter of LUZ DE GUZMAN's deceased brother, LUIS DE GUZMAN. The other compulsory heirs of LUZ DE GUZMAN are her sisters GLORIA G. VILLASAN, REMIGIA DE GUZMAN CABRERA, and LEONILA DE GUZMAN SYYAP, as well as the children of her deceased brother PEREGRIN DE GUZMAN, Sr., namely, PEREGRIN JR., RENATO DE GUZMAN and ELNORA DE GUZMAN. The LUZ DE GUZMAN's estate consists of two parcels of land: a 300,730 square-meter lot covered by TCT No. 6023 and a 146,997 square-meter lot covered by TCT No. 6024.

The complaint further alleged that the Respondent called the heirs to a meeting to discuss his ideas on improving the value of the estate, among others, to wit:

[i]n that meeting, it was agreed that the [Respondent] will undergo the improvement and development of the said real property, including administrative services, hauling of gravel and filling materials, hiring of Geodetic Engineers to make the survey and costs thereof, and the titling of the partitioned property with ten (10) percent of the total hectareage to be given him by way of administrative costs which shall be divided and deducted equally from the shares of the co-heirs; and a lawyer-heir shall prepare or cause to be prepared all legal documents requisite of the

partition, subdivision agreement and the donation to the City of Cabanatuan; xxx<sup>4</sup>

According to Respondents, despite several demands, Petitioner refused to deliver to him several titles covering more or less 8,000 square meters of the property as payment for his administrative costs/expenses.

Respondent further averred in the complaint that the pertinent documents attached therewith, *i.e.*, "Subdivision Agreement," among the heirs does not conform to the true agreement of the heirs and the signatures of the heirs thereon were forged and falsified and that the other heirs of LUZ DE GUZMAN refused to pay him for his administrative services.

On 13 January 2003, the Petitioners filed a Motion to Dismiss<sup>5</sup> the complaint on the grounds that a) the complaint stated no cause of action, b) assuming *arguendo* that the Complaint states a cause of action, the claim upon which the supposed cause of action is founded is unenforceable under the provisions of the Statute of Frauds, and c) the complaint lacks a valid certification against forum-shopping.

On 21 May 2005, the court *a quo* issued an order denying the said motion, *supra*, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing[,] the Motion to Dismiss is hereby DENIED. The defendant is given another fifteen (15) day period from notice within which to file her answer.

On 27 June 2003, the Petitioner filed a motion for reconsideration<sup>6</sup> which the court *a quo* denied on 29 July 2003.

On 23 August 2003, the Petitioner filed her Answer *Ex Abundanti Cautela*.<sup>7</sup>

Feeling aggrieved by the denial of the motion to dismiss and the motion for reconsideration, Petitioner now comes before Us, raising the following issues:

## I

**IN RENDERING HIS ASSAILED ORDERS, PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, CONSIDERING THAT THE SUBJECT COMPLAINT IN CIVIL CASE NO. 4401-AF OBVIOUSLY STATES NO CAUSE OF ACTION[;]**

## II

**EVEN ASSUMING ARGUENDO THAT THERE IS A CAUSE OF ACTION, STILL, PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT DISMISSING THE COMPLAINT SINCE THE CLAIM UPON WHICH SUCH SUPPOSED CAUSE OF ACTION IS FOUNDED IS**