

SECOND DIVISION

[G.R. No. 149787, June 18, 2008]

JUDGE ANTONIO C. SUMALJAG, PETITIONER, VS. SPOUSES DIOSDIDIT AND MENENDEZ M. LITERATO; AND MICHAEL MAGLASANG RODRIGO, RESPONDENTS.

DECISION

BRION, J.:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals ("CA") dated June 26, 2001 and its related Resolution^[2] dated September 4, 2001 in **CA-G.R. SP No. 59712**. The assailed Decision dismissed the petition for *certiorari* filed by petitioner Judge Antonio C. Sumaljag (the "*petitioner*") in the interlocutory matter outlined below in **Civil Cases B-1239 and B-1281** before the trial court. The challenged Resolution denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

On November 16, 1993, Josefa D. Maglasang ("*Josefa*") filed with the Regional Trial Court ("*RTC*"), Branch 14, Baybay, Leyte a complaint^[3] (docketed as Civil Case No. B-1239) for the nullity of the deed of sale of real property purportedly executed between her as vendor and the spouses Diosdidit and Menendez Literato (the "*respondent spouses*") as vendees. The complaint alleged that this deed of sale dated October 15, 1971 of Lot 1220-D is spurious. Josefa was the sister of Menendez Maglasang Literato ("*Menendez*"). They were two (2) of the six (6) heirs who inherited equal parts of a 6.3906-hectare property (Lot 1220) passed on to them by their parents Cristito and Inecita Diano Maglasang.^[4] Lot 1220-D was partitioned to Josefa, while Lot 1220-E was given to Menendez.

The respondent spouses' response to the complaint was an amended answer with counterclaim^[5] denying that the deed of sale was falsified. They impleaded the petitioner with Josefa as counterclaim defendant on the allegation that the petitioner, at the instance of Josefa, occupied Lot 1220-D and Lot 1220-E without their (the respondent spouses') authority; Lot 1220-E is theirs by inheritance while 1220-D had been sold to them by Josefa. They also alleged that the petitioner acted in bad faith in acquiring the two (2) lots because he prepared and notarized on September 26, 1986 the contract of lease over the whole of Lot 1220 between all the Maglasang heirs (but excluding Josefa) and Vicente Tolo, with the lease running from 1986 to 1991; thus, the petitioner then knew that Josefa no longer owned Lot 1220-D.

Civil Case No. 1281^[6] is a complaint that Menendez filed on April 4, 1996 with the RTC for the declaration of the inexistence of lease contract, recovery of possession

of land, and damages against the petitioner and Josefa after the RTC dismissed the respondent spouses' counterclaim in Civil Case No. 1239. The complaint alleged that Josefa, who had previously sold Lot 1220-D to Menendez, leased it, together with Lot 1220-E, to the petitioner. Menendez further averred that the petitioner and Josefa were in bad faith in entering their contract of lease as they both knew that Josefa did not own the leased lots. Menendez prayed, among others, that this lease contract between Josefa and the petitioner be declared null and void.

Josefa died on May 3, 1999 during the pendency of Civil Case Nos. B-1239 and B-1281.

On August 13, 1999, Atty. Zenen A. Puray ("*Atty. Puray*") - the petitioner's and Josefa's common counsel - asked the RTC in Civil Case No. 1239 that he be given an extended period or up to September 10, 1999 within which to file a formal notice of death and substitution of party.

The RTC granted the motion in an order dated August 13, 1999.^[7] On August 26, 1999, Atty. Puray filed with the RTC a notice of death and substitution of party,^[8] praying that Josefa - in his capacity as plaintiff and third party counterclaim defendant - be substituted by the petitioner. The submission alleged that prior to Josefa's death, she executed a *Quitclaim Deed*^[9] over Lot 1220-D in favor of Remismundo D. Maglasang^[10] who in turn sold this property to the petitioner.

Menendez, through counsel, objected to the proposed substitution, alleging that Atty. Puray filed the notice of death and substitution of party beyond the thirty-day period provided under Section 16, Rule 3 of the 1997 Rules of Civil Procedure, as amended. She recommended instead that Josefa be substituted by the latter's full-blood sister, Michaelles Maglasang Rodrigo ("*Michaelles*").

The RTC denied Atty. Puray's motion for substitution and instead ordered the appearance of Michaelles as representative of the deceased Josefa. This Order provides:

WHEREFORE, in view of the foregoing, the motion is hereby DENIED for lack of merit and instead order the appearance of Mrs. Michaelles Maglasang- Rodrigo of Brgy. Binulho, Albuera, Leyte, as representative of the deceased Josefa Maglasang.

SO ORDERED.^[11]

The RTC subsequently denied the petitioner's motion for reconsideration in an order^[12] dated May 25, 2000.

The petitioner went to the CA on a petition for *certiorari* (docketed as CA-G.R. SP No. 59712) to question the above interlocutory orders. In a Decision^[13] dated June 26, 2001, the CA dismissed the petition for lack of merit. The appellate court similarly denied the petitioner's motion for reconsideration in its Resolution^[14] dated September 4, 2001.

The present petition essentially claims that the CA erred in dismissing CA- G.R. No. SP 59712 since: (a) the property under litigation was no longer part of Josefa's

estate since she was no longer its owner at the time of her death; (b) the petitioner had effectively been subrogated to the rights of Josefa over the property under litigation at the time she died; (c) without an estate, the heir who was appointed by the lower court no longer had any interest to represent; (d) the notice of death was seasonably submitted by the counsel of Josefa to the RTC within the extended period granted; and (e) the petitioner is a transferee *pendente lite* who the courts should recognize pursuant to Rule 3, Section 20 of the Rules of Court.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

The Governing Rule.

The rule on substitution in case of death of a party is governed by Section 16, Rule 3 of the 1997 Rules of Civil Procedure, as amended, which provides:

Section 16. *Death of a party; duty of counsel.* -Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased, and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphasis ours)

The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death. The deceased litigant is herself or himself protected as he/she continues to be properly represented in the suit through the duly appointed legal representative of his estate.

[15]

Application of the Governing Rule.

a. Survival of the pending action

A question preliminary to the application of the above provision is whether Civil Case Nos. B-1239 and B-1281 are actions that survive the death of Josefa. We said in *Gonzalez v. Pagcor*:^[16]

"The criteria for determining whether an action survives the death of a plaintiff or petitioner was elucidated upon in *Bonilla v. Barcena* (71 SCRA 491 (1976)). as follows:

. . . The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental. . . .

Since the question involved in these cases relate to property and property rights, then we are dealing with actions that survive so that Section 16, Rule 3 must necessarily apply.

b. Duty of Counsel under the Rule.

The duty of counsel under the aforecited provision is to inform the court within thirty (30) days after the death of his client of the fact of death, and to give the name and address of the deceased's **legal representative or representatives**. Incidentally, this is the only representation that counsel can undertake after the death of a client as the fact of death terminated any further lawyer-client relationship.^[17]

In the present case, it is undisputed that the counsel for Josefa did in fact notify the lower court, although belatedly, of the fact of her death.^[18] However, he did as well inform the lower court that -

"2. That before she died she executed a QUITCLAIM DEED in favor of REMISMUNDO D. MAGLASANG over the land in question (Lot No. 1220-D of Benolho, Albueria, Leyte), evidenced by a QUITCLAIM DEED, copy of which is hereto attached as Annex "B" who in turn sold it in favor of JUDGE ANTONIO SUMALJAG, evidenced by a DEED OF ABSOLUTE SALE, copy of which is hereto attached as Annex "C"."

Further, counsel asked that *"the deceased Josefa Maglasang in her capacity as plaintiff and as Third Party Counterclaim Defendant be substituted in the case at bar by JUDGE ANTONIO SUMALJAG whose address is 38 Osmena Street, Ormoc City"* pursuant to *"Section 16, Rule 3 of the 1997 Rules of Civil Procedure"*.

This notification, although filed late, effectively informed the lower court of the death of litigant Josefa Maglasang so as to free her counsel of any liability for failure to make a report of death under Section 16, Rule 3 of the Rules of Court. In our view, counsel satisfactorily explained to the lower court the circumstances of the late reporting, and the latter in fact granted counsel an extended period. The timeliness of the report is therefore a non-issue.

The reporting issue that goes into the core of this case is whether counsel properly