

## THIRD DIVISION

[ G.R. No. 168747, October 19, 2007 ]

**VICTORIA REGNER, PETITIONER, VS. CYNTHIA R. LOGARTA,  
TERESA R. TORMIS AND CEBU COUNTRY CLUB, INC.,  
RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This Petition for Review on *Certiorari* seeks to reverse the Decision<sup>[1]</sup> dated 6 May 2005 of the Court of Appeals in CA-G.R. CV No. 71028 entitled, "*Victoria Regner v. Cynthia Logarta, Teresa R. Tormis and Cebu Country Club, Inc.*," which affirmed the Order dated 9 November 2000 of the Regional Trial Court (RTC) of Cebu, granting herein respondents' motion to dismiss Civil Case No. CEB 23927. The Order dated 9 November 2000 of the RTC dismissed herein petitioner's complaint for declaration of nullity of a deed of donation, for failure to serve summons on Cynthia Logarta, an indispensable party therein.

Civil Case No. CEB. 23927 arose from the following factual antecedents:

Luis Regner (Luis) had three daughters with his first wife, Anicita C. Regner, namely, Cynthia Logarta (Cynthia) and Teresa Tormis (Teresa), the respondents herein, and Melinda Regner-Borja (Melinda).

Herein petitioner Victoria Regner (Victoria) is the second wife of Luis.

During the lifetime of Luis, he acquired several properties, among which is a share at Cebu Country Club Inc., evidenced by Proprietary Ownership Certificate No. 0272. On 15 May 1998, Luis executed a Deed<sup>[2]</sup> of Donation in favor of respondents Cynthia and Teresa covering Proprietary Ownership Certificate No. 0272 of the Cebu Country Club, Inc.

Luis passed away on 11 February 1999.

On 15 June 1999, Victoria filed a Complaint<sup>[3]</sup> for Declaration of Nullity of the Deed of Donation with Prayer for Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order against Cynthia and Teresa with the RTC, docketed as Civil Case No. CEB. 23927. Victoria alleged in her complaint that: on 17 March 1997, Luis made a written declaration wherein he stated that due to his illness and forgetfulness, he would not sign any document without the knowledge of his lawyer, Atty. Francis Zosa; on 15 May 1998, when Luis was already very ill and no longer of sound and disposing mind, Cynthia and Teresa, conspiring and confederating with each other, fraudulently made or caused to be fraudulently made a Deed of Donation whereby they made it appear that Luis donated to them Proprietary Ownership Certificate No. 0272; since Luis no longer had the ability to write or affix his

signature, Melinda, acting under the influence of her sisters, Cynthia and Teresa, fraudulently manipulated the hand of Luis so that he could affix his thumbmark on the assailed Deed of Donation; on 8 February 1998, or three days before the death of Luis, and when he was already in comatose condition at the Cebu Doctors' Hospital, Melinda, Teresa, and Cynthia caused the preparation of an affidavit to the effect that Luis affirmed the Deed of Donation he allegedly executed earlier by lifting his hand to affix his thumbmark on the said affidavit.

Sheriff Melchor A. Solon served the summonses on Cynthia and Teresa at the Borja Family Clinic in Tagbilaran City wherein Melinda worked as a doctor, but Melinda refused to receive the summonses for her sisters and informed the sheriff that their lawyer, Atty. Francis Zosa, would be the one to receive the same.

Upon her arrival in the Philippines, on 1 June 2000, Teresa was personally served the summons at Room 304, Regency Crest Condominium, Banilad, Cebu City. She filed her Answer<sup>[4]</sup> with counterclaim with the RTC on 6 June 2000.

Subsequently, on 12 September 2002, Teresa filed a motion to dismiss Civil Case No. CEB 23927 because of petitioner's failure to prosecute her action for an unreasonable length of time.

Petitioner opposed<sup>[5]</sup> the motion and filed her own motion to set the case for pre-trial, to which Teresa filed her rejoinder on the ground that their sister, Cynthia, an indispensable party, had not yet been served a summons. Thus, Teresa prayed for the dismissal of petitioner's complaint, as the case would not proceed without Cynthia's presence.

On 9 November 2000, the RTC issued an Order<sup>[6]</sup> granting respondent Teresa's motion to dismiss, pertinent portions of which read:

Considering that the donees in the Deed of Donation are Cynthia R. Logarta and Teresa R. Tormis, they are therefore an (sic) indispensable party (sic). In the case of Quisumbing vs. Court of Appeals, 189 SCRA 325, indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights so that the court could not proceed without their presence

Wherefore, in view of the foregoing, **the instant case is hereby dismissed without prejudice.**

A motion for reconsideration was filed by petitioner, but the same was denied in an Order dated 14 February 2001.

Aggrieved, petitioner appealed to the Court of Appeals. On 6 May 2005, the Court of Appeals rendered a Decision denying the appeal and affirming *in toto* the order of dismissal of the complaint by the RTC and the denial of the motion for reconsideration thereof. The Court of Appeals ratiocinated that petitioner's failure to move for an extraterritorial service of summons constitutes failure to prosecute for an unreasonable length of time, thus:

[T]he plaintiff-appellant [Victoria Regner] should have moved for the extraterritorial service of summons for both defendants-appellees Teresa

R. Tormis and Cynthia R. Logarta as they were not residing and were not found in the Philippines when plaintiff-appellant [Victoria Regner] filed this case below. Although defendant-appellant Teresa Tormis was personally served with summons on June 1, 2000 when she came to the Philippines but the same was only effected after a long wait or after the lapse of almost one year from the date the complaint was filed on June 15, 1999. To allow this practice would be to make the continuation of like proceedings before the courts dependent on when the defendants would be personally served with summons by the time they would come to the Philippines, which would only unnecessarily delay the proceedings and clog the court dockets as well. The afore-cited rule was precisely crafted to meet situations similar to the present case to avoid unnecessary delays.

It has to be emphasized that it is incumbent upon the plaintiff [Victoria Regner] to move with leave of court for the extraterritorial service of summons. Taking into account the considerable time that had elapsed from the filing of the complaint on June 15, 1999 until defendant-appellee Teresa R. Tormis, through counsel, filed a motion to dismiss on September 12, 2000, or approximately fifteen (15) months, without any act on the part of plaintiff-appellant [Victoria Regner] to move for extraterritorial service of summons upon the person of defendant-appellee Cynthia Logarta renders plaintiff-appellant's [Victoria Regner] complaint dismissible for failure to prosecute her action for unreasonable length of time under Section 3, Rule 17, Revised Rules of Court, x x x.<sup>[7]</sup>

Hence, this appeal *via* petition<sup>[8]</sup> for review on *certiorari* filed by petitioner raising the following assignment of errors:

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DELAY IN SERVING SUMMONS ON ONE OF THE DEFENDANTS CONSTITUTES A FAILURE TO PROSECUTE NOTWITHSTANDING THAT THE REST OF THE CO-DEFENDANTS WERE DULY SERVED WITH SUMMONSES

THE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT THE ANSWER FILED BY ONE INDIVIDUAL DEFENDANT REDOUNDS TO THE BENEFIT OF THE OTHER DEFENDANT WHO HAS NOT BEEN SERVED WITH SUMMONS, THE NATURE OF ACTION BEING ADMITTEDLY COMMON AMONG ALL DEFENDANTS.<sup>[9]</sup>

From the foregoing, this Court identifies the issues to be resolved in this petition as: (1) Whether a co-donee is an indispensable party in an action to declare the nullity of the deed of donation, and (2) whether delay in the service of summons upon one of the defendants constitutes failure to prosecute that would warrant dismissal of the complaint.

A Court must acquire jurisdiction over the persons of indispensable parties before it can validly pronounce judgments personal to the parties. Courts acquire jurisdiction over a party plaintiff upon the filing of the complaint. On the other hand, jurisdiction over the person of a party defendant is assured upon the service of summons in the manner required by law or otherwise by his voluntary appearance. As a rule, if a defendant has not been summoned, the court acquires no jurisdiction

over his person, and a personal judgment rendered against such defendant is null and void.<sup>[10]</sup> A decision that is null and void for want of jurisdiction on the part of the trial court is not a decision in the contemplation of law and, hence, it can never become final and executory.<sup>[11]</sup>

Rule 3, Section 7 of the Rules of Court, defines indispensable parties as parties-in-interest without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* for the exercise of judicial power.<sup>[12]</sup> It is precisely "when an indispensable party is not before the court [that] the action should be dismissed."<sup>[13]</sup> The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.<sup>[14]</sup>

As we ruled in *Alberto v. Mananghala*<sup>[15]</sup>:

In an action for recovery of property against a person who purchased it from another who in turn acquired it from others by the same **means or by donation or otherwise**, the predecessors of defendants are indispensable parties if the transfers, if not voided, may bind plaintiff. (Garcia vs. Reyes, 17 Phil. 127.) In the latter case, this Court held:

In order to bring this suit duly to a close, it is imperative to determine the only question raised in connection with the pending appeal, to wit, whether all the persons who intervened in the matter of the transfers and donation herein referred to, are or are not necessary parties to this suit, since it is asked in the complaint that the said transfers and donation be declared null and void – an indispensable declaration for the purpose, in a proper case, of concluding the plaintiff to be the sole owner of the house in dispute.

If such a declaration of annulment can directly affect the persons who made and who were concerned in the said transfers, nothing could be more proper and just than to hear them in the litigation, as parties interested in maintaining the validity of those transactions, and therefore, whatever be the nature of the judgment rendered, Francisco Reyes, Dolores Carvajal, Alfredo Chicote, Vicente Miranda, and Rafael Sierra, besides the said minors, must be included in the case as defendants." (Garcia vs. Reyes, 17 Phil., 130-131.)

It takes no great degree of legal sophistication to realize that Cynthia and Teresa are indispensable parties to Civil Case No. CEB 23927. Cynthia and Teresa allegedly derived their rights to the subject property by way of donation from their father Luis. The central thrust of the petitioner's complaint in Civil Case No. CEB 23927 was that Luis could not have donated Proprietary Ownership Certificate No. 0272 to his daughters Cynthia and Teresa, as Luis was already very ill and no longer of sound and disposing mind at the time of donation on 15 May 1997. Accordingly, the prayer in petitioner's complaint was for the trial court to declare null and void the Deed of Donation and to restrain the Cebu Country Club, Inc. from transferring title

and ownership of Proprietary Ownership Certificate No. 0272 to Cynthia and Teresa.

Thus, based on the Deed of Donation, Teresa and Cynthia are co-owners of Proprietary Membership Certificate No. 0272 of Cebu Country Club, Inc. The country club membership certificate is undivided and it is impossible to pinpoint which specific portion of the property belongs to either Teresa or Cynthia. Indeed, both Teresa and Cynthia are indispensable parties in Civil Case No. CEB 23927.

An indispensable party has been defined as follows:

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.<sup>[16]</sup>

In *Servicewide Specialists, Incorporated v. Court of Appeals*,<sup>[17]</sup> this Court held that no final determination of a case could be made if an indispensable party is not legally present therein:

An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.

The rationale for treating all the co-owners of a property as indispensable parties in a suit involving the co-owned property is explained in *Arcelona v. Court of Appeals*<sup>[18]</sup>:

As held by the Supreme Court, were the courts to permit an action in ejectment to be maintained by a person having merely an undivided interest in any given tract of land, a judgment in favor of the defendants would not be conclusive as against the other co-owners not parties to the