

## THIRD DIVISION

[ G.R. NO. 161286, August 31, 2005 ]

**SPOUSES NARCISO RAYOAN AND PARALUMAN TOLENTINO,  
PETITIONERS, VS. ALLAN FRONDA AND SPOUSES CHARLITO  
VALDEZ AND AVELINA VALDEZ, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On November 11, 1998, herein petitioner Paraluman Tolentino, assisted by her husband Narciso Rayoan, filed a complaint<sup>[1]</sup> before the Regional Trial Court (RTC) of Nueva Vizcaya against herein respondents Allan Fronda (Fronda) and Spouses Charlito Valdez and Avelina Valdez, for Cancellation/Annulment of Title and/or Reconveyance of Land and Damages. The complaint was docketed as Civil Case No. 728 and raffled to Branch 37 of the Nueva Vizcaya RTC.

In her complaint, Paraluman alleged that she obtained a loan of P50,000.00 from Charlito Valdez, to secure which she delivered to him her owner's copy of Transfer Certificate of Title (TCT) No. 73555; that she later discovered that her title had been cancelled by virtue of a falsified deed of sale she and her husband purportedly executed in 1993 in favor of Charlito Valdez' brother-in-law Fronda; that in view of the falsified deed of sale, her title was cancelled and in its stead TCT No. 84914 was issued in the name of Fronda who in turn executed a deed of sale in favor of the spouses Valdez; and that Fronda's title was subsequently cancelled and in its stead TCT No. T-109568 was issued in the name of the spouses Valdez.

In their Answer filed on February 16, 1999 in Civil Case No. 728, Fronda et al. denied Paraluman's allegation in her complaint. Nine months later or on November 17, 1999, the defendants Fronda et al. filed a Motion to Dismiss the case for failure of the plaintiff Paraluman to prosecute her case for an unreasonable length of time.

To the Motion to Dismiss Paraluman filed an Opposition which merited a Reply from Fronda et al.

By Resolution of December 20, 1999, Branch 37 of the Nueva Vizcaya RTC granted the Motion to Dismiss in this wise, quoted *verbatim*:

x x x

Undoubtedly, plaintiffs have been remiss in their duty to prosecute the case. Sec. 1, Rule 18 expressly required them "to promptly move ex-parte that the case be set for pre-trial." Under Administrative Circular 3-99 addressed to all courts and the Integrated Bar of the Philippines, Chief Justice Hilario Davide, Jr. pronounced that plaintiff should file the motion within five (5) days from the filing of the last pleading. The inaction for

nine (9) months is clearly incompatible with the duty to file the motion within five (5) days. Plaintiff have failed to show with convincing or uncontroverted proof that their inaction for such longer period of time was justified.

x x x<sup>[2]</sup> (Underscoring in the original)

Paraluman did not file any Motion for Reconsideration of the above-said RTC Branch 37 December 20, 1999 Resolution of dismissal nor appeal the same.

Subsequently or on June 27, 2000, Paraluman, this time joined by her husband Narciso Rayoan, filed another complaint for Annulment of Title, Specific Performance and Damages against Fronda et al., the same defendants in Civil Case No. 728. The complaint,<sup>[3]</sup> docketed as **Civil Case No. 780** at the RTC of Nueva Vizcaya, echoed essentially the same allegations as those in the complaint in Civil Case No. 728.

Paraluman and her co-plaintiff spouse were of course candid in their second complaint (Civil Case No. 780) by informing that they had earlier filed an "identical case against the defendants." Thus they alleged:

x x x

3. To be candid with the Honorable Court, the herein plaintiffs earlier filed identical case against defendants and was docketed as Civil Case No. 728-37 but was dismissed by the court for the reason that their/our counsel in said case failed to set the case for pre-trial conference as provided by the rules of court prompting the defendants to file a motion to dismiss the complaint with prejudice, but the court only granted the motion but without granting the prayer that the dismissal "be with prejudice," hence in the interest of substantial justice to once and for all determine the validity of the documents in questions as well as the issue on the ownership of the land in litis, plaintiffs respectfully file the case at bar;

x x x<sup>[4]</sup> (Underscoring supplied)

In their Answer<sup>[5]</sup> to the complaint in Civil Case No. 780 dated September 20, 2000 which was mailed on September 22, 2000 and received by the RTC on October 12, 2000, Fronda et al. denied, among other things, the falsification of the deed of sale executed by Paraluman and her spouse in his favor as well as the deed of sale he executed in favor of the Valdez spouses, they alleging, *inter alia*, as follows:

x x x

9. To be candid with the Honorable Court, the actual and real consideration of both contested deeds of sale appear consistently as P50,000.00, but in truth and in fact, the property was bought by defendants for P385,000.00 and as requested by the plaintiffs themselves and to which defendants acceded, the true amount of the sale should not be reflected in the deed in order to avoid paying a big transfer tax/cost as it was their agreement that plaintiff and her husband will take care of the property's transfer to them (Valdezes) and to which

incident people from the [O]ffice of the Registrar (RD) will prove that it was plaintiff Narciso Rayaoan who effected the transfer himself.

x x x<sup>[6]</sup> (Underscoring supplied)

On October 23, 2000, the defendants Fronda et al. filed a Motion to Dismiss<sup>[7]</sup> the complaint in Civil Case No. 780 on the ground that the cause of action of Paraluman and her husband was barred by prior judgment, citing Section 1(f), Rule 16 of the 1997 Rules of Civil Procedure,<sup>[8]</sup> and quoting the resolution of dismissal of Branch 37 of the RTC of Nueva Vizcaya in Civil Case No. 728.

In their Motion to Dismiss, Fronda et al. noted that since the dismissal of Civil Case No. 728 was "silent on whether [it] is with prejudice or otherwise, . . . mandatory application of Section 3, Rule 17, 1997 Rules of Civil Procedure becomes an absolute legal necessity."

Fronda et al. thus concluded that *res judicata* had set in.

By Order<sup>[9]</sup> of October 23, 2000, Presiding Judge of Branch 30 of the RTC of Nueva Vizcaya dismissed the complaint in this wise:

Guided by Sec. 3 of Rule 17 of the 1997 Rules of Civil Procedure, as amended, the Court on its own hereby DISMISSES the instant case.

The spouses-herein petitioners Rayoan filed a Motion for Reconsideration<sup>[10]</sup> of the order of dismissal of their complaint, they alleging that a verification of the records showed that the defendants Fronda et al. filed their Answer on October 12, 2002 but no copy thereof was furnished to them nor to the notary public, Rufino Lumase, who acknowledged the verification of their complaint, hence, the Answer filed by the defendants is a mere scrap of paper.

By Order<sup>[11]</sup> of November 9, 2000, Branch 30 of the RTC of Nueva Vizcaya denied the Motion for Reconsideration in this wise, quoted *verbatim*:

With or without defendants' answer, the failure of receipt of which the plaintiffs are relying on for the reconsideration of the Court's earlier order of dismissal and even showing it up with a citation of Sec. 1, Rule 13 of the Rules of Court, the Court would have dismissed the complaint as in fact it dismissed it.

That earlier order of dismissal rendered by RTC Branch 37 with which this same case was earlier filed had "the effect of an adjudication upon the merits unless otherwise declared by the Court." (Sec. 3, Rule 17, Rules of Court).

That magic word "without prejudice" being an exception to the rule is not unintentionally omitted by the presiding Judge of RTC Branch 37 to render his order of dismissal an adjudication upon the merits and who is this Judge now before whom is filed the identical case to overturn that order issued by a Judge of equal authority and jurisdiction.

WHEREFORE, premises considered, the Motion for Reconsideration is