

## SECOND DIVISION

**[ A.M. No. 00-7-299-RTC, August 31, 2001 ]**

**REQUEST FOR CONSOLIDATION OF CIVIL CASE NO. R-1169,  
RTC-BR. 45, SAN JOSE, OCCIDENTAL MINDORO WITH CIVIL  
CASE NO. 3640, RTC-BR. 49, CABANATUAN CITY.**

### **R E S O L U T I O N**

**BELLOSILLO, J.:**

This resolves the *Compliance and Request* filed by Danilo R. Padiernos, plaintiff in Civil Case No. R-1169, RTC-Br. 49, San Jose, Occidental Mindoro, through his counsel Atty. Renato A. Martinez, pursuant to our Resolution of 21 February 2001 requiring plaintiff to explain why he should not be declared in contempt for forum shopping. The antecedents follow:

On 14 October 1999 Danilo R. Padiernos filed a *Complaint* against Pilar Alarcon-Paja "For: Declaration of Nullity of Title with Damages," docketed as Civil Case No. 3640 and raffled to RTC-Br. 29, Cabanatuan City.

On 29 October 1999 the same Danilo R. Padiernos filed another complaint against the same Pilar Alarcon-Paja "For: Annulment of Contract with Damages," docketed as Civil Case No. R-1169 and raffled to RTC-Br. 45, San Jose, Occidental Mindoro.

On 11 February 2000 defendant Pilar Alarcon-Paja wrote a letter to the Court requesting that Civil Case No. R-1169 be transferred from RTC-Br. 45, San Jose, Occidental Mindoro, to RTC- Br. 29, Cabanatuan City, for consolidation since both cases allegedly involved the same parties, subject matter and issues.

On 2 March 2000, upon motion of defendant Pilar Alarcon-Paja, Judge Ubaldino Lacurom of RTC-Br. 29, Cabanatuan City, dismissed Civil Case No. 3640 for forum shopping and for failure to submit a certificate of non-forum shopping as required in Sec. 5, Rule 7, 1997 Rules of Civil Procedure, specifically holding that -

VIEWED from the foregoing, the Court believes that the acts of the plaintiff constitute a clear case of forum shopping.

Forum shopping has been characterized as an act of malpractice that is prohibited and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavy burdened dockets of the courts (*Temple Export and Import Corp. v. CA*, citation omitted).

On 2 June 2000 Danilo R. Padiernos filed a third *Complaint* again "For: Declaration

of Nullity of Title with Damages," with the same allegations as those contained in his *Complaint* in Civil Case No. 3640. The new *Complaint* which was now accompanied with the proper certification of non-forum shopping was docketed as Civil Case No. 3789 and raffled to RTC-Br. 28, Cabanatuan City.

It is observed that all three (3) complaints were filed by Atty. Renato A. Martinez in behalf of plaintiff Danilo R. Padiernos.

On 26 July 2000 the Third Division of this Court granted defendant Pilar Alarcon-Paja's previous request to transfer Civil Case No. R-1169 from RTC-Br. 45, San Jose, Occidental Mindoro, to RTC-Br. 29, Cabanatuan City, after receiving the comment of Danilo R. Padiernos that he had no objection to such transfer.

On 19 September 2000 Judge Tomas B. Talavera of RTC-Br. 28, Cabanatuan City, dismissed Civil Case No. 3789 without prejudice. However, on 16 November 2000, upon motion of defendant Pilar Alarcon-Paja, Judge Talavera amended his 19 September 2000 order by declaring the dismissal to be with prejudice.<sup>[1]</sup>

On 11 January 2001 defendant Pilar Alarcon-Paja filed an *Urgent Request* informing the Court that Civil Case No. 3789 was pending before RTC-Br. 28, Cabanatuan City, and requesting that Civil Case No. R-1169 be transferred to Br. 28 instead of Br. 29.

On 1 February 2001 plaintiff Danilo R. Padiernos appealed the ruling of the RTC-Br. 28, Cabanatuan City<sup>[2]</sup> regarding the amended order of Judge Talavera dismissing the case with prejudice.

On 21 February 2001 the Court noted the urgent request of defendant Pilar Alarcon-Paja and ordered Danilo R. Padiernos to explain why he should not be declared in contempt for forum shopping.

In his *Compliance and Request* Danilo R. Padiernos claims that he should not be cited in contempt for forum shopping for the following reasons: (a) the causes of action in Civil Case No. 3789 and Civil Case No. R-1169 are not the same since Civil Case No. 3789, which is an action for declaration of nullity of title, is an action in *rem*, while Civil Case No. R-1169, which is an action for the annulment of a deed of assignment, is an action in *personam*; (b) since Civil Case No. 3640 was dismissed for failure to submit the requisite certification of non-forum shopping then such dismissal (according to Sec. 5, Rule 7, 1997 Rules of Civil Procedure) is without prejudice, consequently, the same action can be re-filed; (c) in his *Complaint* in Civil Case No. 3789 he disclosed the pendency of Civil Case No. R-1169 and the filing earlier of Civil Case No. 3640, thus proving that he had no intention to commit forum shopping; and, (d) he had no intention to mislead the courts for he honestly believed that his filing of the complaints was within the purview of the law. In his *Compliance*, he also requests for the retention of Civil Case No. R-1169 in San Jose, Occidental Mindoro.

The arguments of plaintiff Danilo R. Padiernos are hollow and devoid of merit.

If Civil Case No. R-1169 (for annulment of deed of assignment) and Civil Case No. 3789 (for declaration of nullity of title) were to be tried separately, then conflicting decisions can arise. Defendant Pilar Alarcon-Paja can be declared owner of the land