

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04537-MIN, January 30, 2014]

THE HEIRS OF PAIDU DUMACON, NAMELY: DELIA HASSAN-DUMACON, AND BAILYN D. ABDUL, REPRESENTED BY: DELIA DUMACON-HASSAN, PETITIONERS, VS. THE HEIRS OF THE LATE BUANAY CAMPI, REPRESENTED BY: JULIETA BERANGAN-ESCUETA, AND THE HON. ROGELIO R. NARESMA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF COTABATO, BRANCH 23, RESPONDENTS.

D E C I S I O N

LOPEZ, J.:

Before the Court is a petition for *certiorari*^[1] under Rule 65 of the Rules of Court ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Regional Trial Court of Kidapawan City, Branch 23 (hereafter, court *a quo*) in issuing the

(1) August 4, 2009 Order^[2] issued in Civil Case No. 08-99, entitled "*Heirs of Uga Campi, represented by: Buanay Campi, Alfonso Campi and Rene Boy C. Birangan v. Heirs of Datu Paido Dumacon, represented by: Delia Dumacon-Hassan, Salama D. Mendoza, Abdul Dumacon and Bailyn D. Abdul*" which denied petitioners' motion for leave of court to admit motion to dismiss; (2) May 13, 2010 Order^[3] which denied petitioners' motion for reconsideration of the August 4, 2009 Order; and the (3) September 7, 2011 Order^[4] which denied petitioners' second motion for reconsideration for being a prohibited pleading.

The Facts:

The late Uga Campi, the predecessor-in-interest of respondents, applied for a homestead patent over a parcel of public land situated at barrio Lanao, Kidapawan, Cotabato more particularly described as Lot No. 31, Block 24, Kidapawan Public Land Subdivision, Pls-54, containing an area of 43,881 square meters (subject property). Uga Campi died during the pendency of the homestead application, hence, Original Certificate of Title (OCT) No. P-2776 over the subject property was issued in the name of the Heirs of Uga Campi represented by Ukada Campi on May 18, 1966.

On November 14, 1972, the heirs of Uga Campi namely: Udog Tumindag Campi (the surviving spouse of Ukada Campi) with her children Pilar Campi, Alfonso Campi, Merlinda Campi, Rowena Campi and Buanay Campi (the daughter of Uga Campi) filed Civil Case No. 236 against the Heirs of Paidu Dumacon, represented by Delia Hassan (petitioners herein) for recovery of possession and right of ownership before the Regional Trial Court of Kidapawan City, Branch 17. The heirs of Uga Campi sought to recover the possession of the subject property illegally occupied by the Heirs of Paidu Dumacon.

On March 15, 1993, however, the Heirs of Uga Campi and the Heirs of Paidu Dumacon entered into an Amicable Settlement whereby the parties agreed:

(1) That the HEIRS OF UGA CAMPI hereby recognize the actual physical possession and right of ownership over the parcel of land involved in this case, known as Lot No. 31, Block 24, Kidapawan Public Land Subdivision, Pls-59, by DATU PAIDU DUMACON and his heirs since 1945 up to the present;

(2) That by virtue of the aforesaid recognition, the Heirs of Uga Campi hereby bind themselves to execute the necessary deed of conveyance, or transfer, or sell over the aforesaid lot in favor of the HEIRS OF DATU PAIDU DUMACON upon the termination of the cases now pending in Court, and as soon as the title over the land – Original Certificate of Title No. P-27760, in the name of the "Heirs of Uga Campi, represented by Ukada Campi" – shall have been cleared of whatever liens and encumbrances that may be attached thereto.

(3) That for and in consideration of the foregoing recognition of their rights of possession and ownership over the land subject herein by the HEIRS OF UGA CAMPI, the HEIRS OF DATU PAIDU DUMACON hereby bind and obligate themselves to pay the former the sum of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,00.00) Philippines currency, payable as follows:

(a) P100,000.00 upon the signing and execution hereof;

(b) P1,400,000.00 on or before the execution of the deed of conveyance stated in paragraph (2) above;

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(6) That both parties herein hereby jointly move for the dismissal of the above-entitled case upon the filing hereof; and

(7) That the parties herein hereby agree and covenant to faithfully and honestly comply with the terms and conditions of the Amicable Settlement.

DONE at Kidapawan, Cotabato, Philippines, this 15th day of March, 1993.

HEIRS OF UGA
CAMPI:-

By:

(Thumbmark)

UDOG TUMINDAG
CAMPI
(Surviving Spouse
of Ukada Campi,

HEIRS OF DATU
PAIDU DUMACON:-

(sgd)

By: DELIA D.
HASSAN

(Daughter)

Son of UGA CAMPI)

(sgd)
PILAR CAMPI
ALFONSO CAMPI
(Daughter of
Ukada)

(sgd)
ALFONSO CAMPI
(Son of Ukada)

(sgd)
MERLINDA CAMPI
(Daughter of
Ukada)

(sgd)
ROWENA CAMPI
(Daughter of
Ukada)

(Thumbmark)
BUANAY CAMPI
(Daughter of Uga
Campi)

I HEREBY WITNESS AND AFFIRM THE THUMBMARK OF MY
MOTHER; BUANAY CAMPI:

(sgd)
RENE BOY C.
BIRANGAN
(Son of Buanay
Campi)^[5]

On July 19, 1993, presiding Judge Rodolfo M. Serrano of Regional Trial Court of Kidapawan City, Branch 17 approved the above compromise agreement of the parties.

In compliance with the compromise agreement, the heirs of Uga Campi executed a declaration of heirship with sale in favor of the Heirs of Paidu Dumacon (herein petitioners). Resultantly, OCT No. P-27760 in the name of the Heirs of Uga Campi was cancelled and in lieu thereof Transfer Certificate of Title (TCT) Nos. T-92083 was issued in the name of Buanay Campi, Alfonso Campi, Pilar Campi, Merlina Campi, and Rowena Campi. Subsequently, TCT No. T-92083 was cancelled and TCT No. T-92084 was issued in the name of the Heirs of Paidu Dumacon, namely: Delia Dumacon-Hassan, Salama DUMAcon-Mendoza, Abdul Dumacon and Bailyn Dumacon-Abdul.

The controversy in this case however arose when the Heirs of Paidu Dumacon despite the transfer of the title in their favor pursuant to the terms of the amicable settlement allegedly failed to pay the Heirs of Uga Campi the amount of Php1,500,000.00 as consideration for the transfer of the subject property in their favor.

This prompted the Heirs of Uga Campi, represented by Buanay Campi, Alfonso Campi and Rene Boy C. Berangan to file Civil Case No. 08-99^[6] against the petitioners for reconveyance and/or declaration of nullity of title, damages and

attorney's fees with prayer for preliminary injunction and temporary restraining order before the court *a quo* on May 27, 1999.

In their Answer with Special and Affirmative Defenses and Counterclaim,^[7] petitioners maintain that they have fully complied with their obligation to pay to the Heirs of Uga Campi the consideration of their Amicable Settlement in the amount of Php1,500,000.00. They prayed for the dismissal of the complaint for lack of cause of action as the claims of the Heirs of Uga Campi have been fully paid, waived or extinguished.

On June 14, 2000, Alfonso Campi, the co-petitioner of Buanay Campi in Civil Case No. 08-99 filed a Motion to Withdraw Complaint^[8] purportedly in behalf of the Heirs of Uga Campi, alleging that they have already ironed out their misunderstanding with the petitioners.

However, on October 15, 2001, Buanay Campi, in her capacity as the daughter of the late Uga Campi, filed an amended complaint^[9] before the court *a quo* for Declaration of Nullity of: Amicable Settlement; Declaration of Heirship with Sale; Absolute Deed of Sale; Transfer Certificate of Titles; Reconveyance, and Reinstatement of Title, Damages and Attorneys Fees against the Heirs of Paidu Dumacon. She also included her nephews and nieces (the heirs of Ukada Campi, namely: Alfonso Campi, Pilar Campi, Merlinda Campi, and Rowena Campi), the Land Bank of the Philippines and the Register of Deeds of the Province of Cotabato as additional defendants.

On December 10, 2001, the court *a quo* admitted the amended complaint. Petitioners then filed their Answer to the Amended Complaint on March 21, 2002.

On December 30, 2002, pre-trial was terminated. Thereafter, trial on the merits ensued.

After respondents rested their case, petitioners commenced the presentation of their evidence by presenting its first witness, Delia Dumacon-Hassan.

However, on July 1, 2008, and during the pendency of the trial, petitioners filed a Motion for Leave to Admit Motion to Dismiss with Leave of Court.^[10] Petitioners contend that the court *a quo* has no jurisdiction over the case because the compromise agreement previously approved by the court in Civil Case No. 236 constitutes *res judicata*. Petitioners added that the filing of Civil Case No. 08-99 constitutes forum shopping on the part of respondents.

On August 4, 2009, the court *a quo* issued the first assailed Order denying petitioners' motion for leave to admit motion to dismiss. The court *a quo* noted that since petitioners already started presenting their evidence, it will be in the interest of the earlier resolution of the case if the petitioners continue to present their defenses and the case be tried on the merits. The court *a quo* further held:

At the outset, defendants did not file any opposition to the motion of plaintiffs to admit amended complaint. On December 10, 2001, an order was issued admitting the amended complaint. Defendants' then counsel Atty. Jorge Zerrudo filed motion of bill of particulars on January 4, 2002. When Atty. Danilo Balucanag counsel for the plaintiffs tendered to him a copy of the amended complaint with its

amendments duly underlined, he was satisfied of plaintiff's compliance of the rules. The motion became moot and academic and hence, was denied.

Defendants through Atty. Zerrudo filed answer to amended complaint on March 21, 2002. After pre-trial was conducted, pre-trial order was issued on September 30, 2002. Subsequently amended pre-trial order was issued on December 30, 2002.

The amended pre-trial order of December 3, 2002 controlled the subsequent course of action in this case. As provided under Section 7, last paragraph of Rule 18

the contents of the pre-trial order shall control the subsequent course of action unless modified before trial to prevent manifest injustice. The parties did not seek any amendment thereof. Hence, trial shall be conducted or controlled by the aforesaid amended pre-trial order.

Defendants did not invoke affirmative defenses to be heard ahead of the evidence-in-chief of the plaintiffs. Hence, proceeding of the case was conducted without their affirmative defenses heard ahead of the evidence-in-chief of the plaintiffs.

Defendants had begun presenting evidence, after plaintiffs rested their evidence. Defendant Delia Hassan testified, albeit partially. It will be in the interest of the earlier resolution of the case if the defendants be allowed to continue to present their defenses. Obviously, whatever ruling that this Court may take in their motion to dismiss will still be subject to other remedies which will again prolong the litigation. The resolution of all the causes of actions raised by the plaintiffs may be held in abeyance as a consequence.

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The grounds cited by the defendants in their motion to dismiss are amply discussed in their answer to the amended complaint. Defendants entered into pre-trial. As a result thereof, a pre-trial order and amended pre-trial order were issued. Under the rules, the pre-trial order shall control the subsequent course of action of this case. Any of the parties may not deviate from what had been taken up during the pre-trial proceedings unless the pre-trial order is set aside for the purpose of preventing manifest injustice. However, this must be done before trial commence. The stage now of the proceeding is the reception of defendants' evidence. Defendant Delia Hassan partially testified. The amended pre-trial order may not be set aside anymore.^[11]

The subsequent motion for reconsideration filed by petitioners was denied by the court *a quo* in the second assailed Resolution dated July 29, 2011.^[12]

On January 27, 2011, petitioners filed a second motion for reconsideration^[13] raising substantially the same issues raised in the earlier motion for reconsideration.