

TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 04673-MIN, January 30, 2014]

FLORENCIA NISNISAN, PETITIONER, VS. HON. JOSEFINA GENTILES BACAL IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 10, REGIONAL TRIAL COURT OF MALAYBALAY CITY, BUKIDNON, VICENTA CUBITA AND FLORDELIZA L. BALILING, RESPONDENTS.

D E C I S I O N

FRANCISCO, J.:

This is a Petition for *Certiorari*,^[1] under Rule 65 of the Rules of Court, with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), seeking to nullify the Orders dated June 21, 2011 and October 17, 2011^[2] of the Regional Trial Court (RTC), 10th Judicial Region, Branch 10, Malaybalay City, Bukidnon in Civil Case No. 3945-09, an action for "Reconveyance of Title and Damages".

The Facts of the Case

On March 15, 2006, plaintiffs Vicenta Cubita & Flordeliza Baliling (herein private respondents) filed a complaint for "Cancellation of title, Recovery of Possession and Damages" against defendant Florencia Nisnisan (herein petitioner) before the RTC, 10th Judicial Region, Branch 9, Malaybalay City, Bukidnon docketed as Civil Case No. 3539-06.^[3]

On July 7, 2006, defendant filed her Answer to the complaint.^[4]

On June 16, 2008, the RTC Branch 9, Malaybalay City, issued an Order dismissing the complaint, thus:

It would appear from the pleading and the Pre-Trial Conference that ensued that the land involved in this case is a registered parcel of land. Lot Psu-231061 with an area of 33,331 square meters, more or less covered with Original Certificate of Title No. P-40766 under the name of the defendant who is in actual possession thereof.

A certificate of title is not subject to collateral attack. Under the Property Registration Decree, title issued under the Torrens System can only be altered, modified or canceled in direct proceeding in accordance with the law.

IN VIEW OF THE FOREGOING and for failure of plaintiff to file its amended complaint per order made in open Court on February 19, 2008 during the Pre-trial Conference, case is hereby ordered dismissed.^[5]

Plaintiffs' Motion for Reconsideration of the June 16, 2008 Order was denied by RTC Branch 9 in its Order dated February 16, 2009, the pertinent portion of which stated-

Scrutiny of the records showed that original complaint was filed on March 3, 2006 and the defendants filed an Answer on July 7, 2006 and prayed for the dismissal of the case considering that the title of the subject land was issued more than a year, thus, it has already attained its indefeasibility.

On March 2, 2007, the plaintiffs filed an amended complaint which was admitted by the Court and the only changes from the original complaint were, the word reconveyance was added in the caption and also in the prayer.

Moreover, the instant case was dismissed for failure of the plaintiffs to amend its complaint as contained in the assailed Order.

The rule is, it is the allegations in the complaint may properly be considered in ascertaining the existence of a cause of action. (sic) Scrutiny of the complaint, one can inferred (sic) that it is an attack against the title of the property issued in favor of the defendant. This kind of attack is barred as above-discussed.^[6]

On June 3, 2009, plaintiffs filed another complaint for "Cancellation of Title and Damages" against defendant before the RTC Branch 10, Malaybalay City, Bukidnon docketed as Civil Case No. 3945-09.^[7]

On July 9, 2009, defendant filed her Answer to the complaint.^[8]

On May 27, 2010, plaintiffs filed a Motion for Leave to Amend Complaint^[9] with the attached copy of the Amended Complaint for Reconveyance of Title and Damages.^[10]

On February 17, 2011, the RTC Branch 10 issued a Resolution which, *inter alia*, decreed:

Adopting the observation made by the defendant, it must be recalled that prior to the institution of the present case, herein plaintiffs earlier filed before RTC Br. 9, Malaybalay City, Bukidnon, Civil Case No. 3539-06 for Cancellation of Title, Recovery of Possession and Damages. Considering that the title of defendant over the land in litigation has already become indefeasible, plaintiffs, opted to amend the original complaint from Cancellation of Title to Recovery of Title to avoid outright dismissal thereof. The main allegations as well as the relief prayed for were not amended but remained unchanged. The case was ordered dismissed by the Court however and plaintiffs' motion for reconsideration was likewise denied. On June 3, 2009, herein plaintiffs filed this present case again for "Cancellation of Title and Damages", seeking once more to declare the nullity or cancellation of OCT No. 40766 in the name of defendant. It is noteworthy in this connection that the allegation as well as the reliefs sought for in the three complaints, namely: [1] The original complaint in Civil Case No. 3539-06; [2] The Amended Complaint thereof and [3] The

present complaint are the same, in fact, a verbatim copy or reproduction of each other.

As correctly pointed out by the defendant, all the requisites of *res judicata* are present in this case. First, the order of dismissal in Civil Case No. 3539-06 rendered by the RTC Br. 9 is final. Second, the said Order is an adjudication upon the merits [Section 3, Rule 17 of the Rules of Court]. Third, the said order was rendered by court having jurisdiction over the subject matter and the parties and Fourth, there is between the first and the present action, identity of parties, of subject matter and cause of action.

In the light of the above, the Court finds plaintiffs' Motion for Leave to Amend Complaint bereft of merit, thus DENIED. On the other hand[,] defendant's grounds relied in her Special and/or Affirmative Defenses appear to be meritorious, hence, the instant Complaint is hereby ordered DISMISSED and plaintiffs are hereby ordered to vacate the land in litigation and return to them the possession of the property in litigation.

SO ORDERED.^[11]

On June 21, 2011, the RTC Branch 10 granted plaintiffs' Motion for Reconsideration of the February 17, 2011 Resolution, viz-

In their plea, movants pray (sic) that this Court takes a second look on the arguments raised as well as the jurisprudence invoked.

Accordingly, citing Section 3, Rule 17 of the Revised Rules on Civil Procedure, any dismissal which is grounded on the failure to comply with the order of the court shall have the effect of an adjudication upon the merit[s] but only if the order is valid. Movants claimed that when the Presiding Judge of RTC Br. 9 ordered herein movants to amend their complaint under Civil Case No. 3539-06 for Reconveyance [of] Title, etc. changing the cause of action to that of Annulment of Title, movant failed and refused to do so alleging that such order was patently erroneous and eventually led to the dismissal of their case.

While it is true that the present action is for the cancellation of title and damages, however, a perusal of the allegations raised by the plaintiffs-movants, particularly from paragraph 3 to paragraph 9 of the complaint and its prayer, appears to be an action for reconveyance and nothing in the allegations which prayed for the setting the decree of registration, nor aimed to open in order to review or attack the alleged erroneous issuance of title to the defendant.(sic)

Thus, in the case of Javier vs. CA, et al., GR No. 101177, March 28, 1994 which has bearing in this present case, the Supreme Court decreed:

"The basic rule is that after the lapse of one (1) year from entry, a decree of registration is no longer open to review or attack, even though its issuance is attended by actual fraud. This does not mean however that the aggrieved party is without a remedy at law. If the property has not yet passed to an innocent purchaser for value, the action for reconveyance