

## TWENTY-FIRST DIVISION

[ CA-G.R. CV NO. 02776-MIN, March 27, 2014 ]

**AMADEO C. BERNARDO, NEMECIANO C. BERNARDO, HEIRS OF  
SATURNINO C. BERNARDO, REPRESENTED BY VICTOR F.  
BERNARDO, NORA T. VDA. DE BERNARDO, RONALD T.  
BERNARDO, JEFFREY T. BERNARDO AND GREGORY T.  
BERNARDO, PLAINTIFFS-APPELLANTS, VS. SPOUSES BENJAMIN  
ALFARO AND JUSTINA DELOS SANTOS, DEFENDANTS-  
APPELLEES.**

### D E C I S I O N

**FRANCISCO, J.:**

This is an appeal from the Orders<sup>[1]</sup> dated 14 July 2011 and 11 August 2011 of the Regional Trial Court, 9<sup>th</sup> Judicial Region, Branch 12, Zamboanga City dismissing plaintiffs-appellants' complaint for failure to formally offer their evidence and denying their Motion for Reconsideration, respectively.

#### **Factual Antecedents**

The case arose from the Complaint dated 26 May 1997 filed by the plaintiffs against the defendants for *Cancellation of Title No. T-103,276 with Preliminary Injunction and Damages* before the Regional Trial Court, 9th Judicial Region, Branch 12, Zamboanga City (RTC for brevity).

On 9 June 1997, the defendants filed a Motion to Dismiss<sup>[2]</sup> the complaint for failure to comply with the Katarungang Pambarangay Rules under The Local Government Code of 1991.

On 30 July 1997, the RTC issued the Order<sup>[3]</sup> denying defendants' motion to dismiss and requiring them to file their answer.

On 31 August 1998, the defendants filed their Answer<sup>[4]</sup> to the complaint.

The plaintiffs and the defendants filed their respective Pre-trial Briefs<sup>[5]</sup> on 17 February 1999 and 30 March 1999.

After several postponements and a lapse of about fourteen years (14) from the filing of the complaint, the RTC issued the Order<sup>[6]</sup> dated 26 January 2011, viz:

"In view of the fact that the last witness which (sic) plaintiffs intended to present is merely a corroborative witness and is likewise not listed in the Pre-trial Order of February 17, 2000, the plaintiffs are instead directed to rest their case and given a period of twenty (20) days within which to formally offer their evidence in writing, furnishing a copy thereof the

defendants through counsel who is likewise given the same period of time within which to manifest their comment and/or objection thereto. Thereafter, the Court will rule on the admissibility of the evidence so submitted and formally offered.

In the meantime, set the initial presentation of defendant's evidence to July 18, 19, 25 & 26, 2011 all at 8:30 o'clock in the morning.

SO ORDERED."

On 14 July 2011, the RTC issued the assailed Order<sup>[7]</sup>, thus:

On January 26, 2011, an Order was issued by this Court in open court, directing the plaintiffs to rest their case and formally offer their documentary evidence within 20 days therefrom. Up to this point in time however, no formal offer of the plaintiff's documentary exhibits was made by the plaintiffs and thus, this Court has no documentary evidence to consider and appreciate in evidence and it is apparent that the plaintiff's cause of action herein relies heavily and exclusively on their documentary evidence which they however failed to submit in evidence despite the Order of January 26, 2011.

**WHEREFORE**, for the unjustified failure on the part of the plaintiffs to comply with this Court's Order dated January 26, 2011 and with no documentary evidence to consider and appreciate herein, the above-entitled case is hereby ordered **DISMISSED** pursuant to Section 3, Rule 17 and Sections 34 and 35, Rule 132 of the Rules of Court.

SO ORDERED."<sup>[8]</sup>

On 3 August 2011, the plaintiffs filed their MOTIONS TO (1) RECONSIDER ORDER OF JULY 14, 2011<sup>[9]</sup> AND (2) ADMIT FORMAL OFFER OF PLAINTIFFS' DOCUMENTARY EXHIBITS.<sup>[10]</sup>

On 4 August 2011, the defendants filed their Opposition to the Motion for Reconsideration.<sup>[11]</sup>

In the Order<sup>[12]</sup> dated 11 August 2011, the RTC denied the twin motions of the plaintiffs, viz:

"This Court have been already extremely considerate to the plaintiffs herein in allowing them almost fourteen (14) long years to present their evidence, yet, after such generous gesture afforded to plaintiff[s], [they] miserably and unjustifiably failed to comply with the last Order of this Court which could have finally terminated plaintiffs['] presentation of evidence given on January 26, 2011. This Court cannot be persuaded by the reasons raised by plaintiffs['] counsel in [their] motion as this Court, in the Order of January 26, 2011

gave plaintiff[s] 20 days within which to comply with the same which Order was made in the presence of plaintiffs['] counsel who conformed to the said period given and thus, to this Court's mind, the said time given is more than enough time for them to have complied with the said Order. Not having complied with the same after more than five (5) long months thereafter is clearly and definitely unjustified."<sup>[13]</sup>

On 25 August 2011, plaintiffs filed a Notice of Appeal<sup>[14]</sup> from the assailed order raising questions of facts and law.

In the Order<sup>[15]</sup> dated 8 September 2011, the RTC ordered the transmittal of the entire records of the case to this Court.

Hence, this appeal.

In this recourse, the plaintiffs (appellants hereinafter) fault the RTC with the Assignment of Error<sup>[16]</sup>, viz:

"THE COURT A QUO ERRED  
IN DISMISSING THE ABOVE-CAPTIONED CASE  
FOR FAILURE OF THE PLAINTIFFS-  
APPELLANTS TO FORMALLY OFFER THEIR  
EVIDENCE ON TIME."<sup>[17]</sup>

## **Our Ruling**

*Submitted for resolution is the propriety of the dismissal of appellants' complaint for their failure to formally offer their evidence.*

***The RTC gravely erred in dismissing the case based on appellants' failure to comply with the RTC Order<sup>[18]</sup> dated 26 January 2011 ordering them to formally offer their evidence in accordance with Sections 34 and 35 of the Rule 132 of the Rules of Court.***

There is nothing under Sections 34 and 35 of Rule 132 of the Rules of Court which mandates the dismissal of the complaint on the ground of failure to formally offer evidence. Sections 34 and 35 read:

Sec. 34. *Offer of Evidence.* --- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Sec. 35. *When to make offer.* --- As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be in writing.

Neither may the failure of the appellants to formally offer evidence be a ground for dismissal for failure to comply with a