

SIXTEENTH DIVISION

[CA-G.R. CV No. 99975, October 23, 2014]

WONG LING LING, PLAINTIFF-APPELLANT, VS. RESTITUTO S. SOLOMON, REGISTER OF DEEDS OF VALENZUELA CITY, ARNOLD NECISARIO AND DANILO INTOY, DEFENDANTS-APPELLEES.

DECISION

ZALAMEDA, R.V., J.:

This is an appeal seeking the reversal of the twin Orders dated 25 June 2012^[1] and 06 August 2012,^[2] issued by Branch 172, Regional Trial Court of Valenzuela City^[3] in Civil Case No. 220-V-11 entitled "Wong Ling Ling, Plaintiff versus Restituto S. Solomon, Register of Deeds of Valenzuela City, Arnold Necisario and Danilo Intoy, Defendants," which dismissed the case and denied the reconsideration thereof.

The antecedent facts are as follows:

Allegedly, appellant Wong Ling Ling^[4] and her husband Tan Ming Chuan, a.k.a. Willy Tan Ming Chuan, have established their conjugal home^[5] in the property covered by Transfer Certificate of Title^[6] No. V-35993^[7] of the Registry of Deeds for Valenzuela City, registered in the name of "Tan Ming Chuan, aka Willy Tan, of legal age, Filipino, married to Wong Ling Ling, Chinese citizen."^[8] On 29 January 2009, a Notice of Levy,^[9] was made on the subject property in NLRC NCR Case No. 02-01965-03,^[10] entitled "Arnold Nec[i]ssario and Danilo Intoy,^[11] Complainants, versus Malabon Star Construction Supply and Willy Tan Meng Chuan, Respondents" and subsequently annotated on the TCT under Entry No. 172527/V-35993.^[12] Soon, a Certificate of Sale,^[13] as well as the Sheriff's Final Deed of Sale,^[14] were issued in favor of appellees Necisario and Intoy.

According to the appellant, the levy made upon the whole property was illegal as she was not a party to the NLRC case and in violation of her rights as the legal spouse, in so far as her undivided conjugal share of one-half (1/2) *pro indiviso* is concerned, thus, prompting her on 08 December 2011 to initiate with the court a *quo*, the Complaint^[15] for the Declaration of Nullity of Levy on Execution, Certificate of Sale and Sheriff's Final Deed of Sale and Damages, against appellees Necisario and Intoy, together with the Sheriff of the National Labor Relations Commission,^[16] Restituto S. Solomon^[17] and the Register of Deeds^[18] of Valenzuela City, docketed as Civil Case No. 220-V-11.

Prior to the filing of the subject Complaint, it appears that on 15 November 2011, appellees Necisario and Intoy filed a Petition for the Cancellation of Title No V-35593 and Issuance of New Title docketed as LRC no. 75-V-11^[19] before Branch 270 of the

Regional Trial Court^[20] of Valenzuela City.^[21] Appellant filed a Motion to Admit Complaint in Intervention^[22] with the Complaint in Intervention^[23] attached thereto in the said case, based substantially on the same averments in the subject Complaint. Said Motion was however denied.^[24] Upon denial of her Motion for Reconsideration,^[25] appellant filed a Notice of Appeal which she later on withdrew.^[26] This was granted by the trial court in its Order^[27] dated 06 July 2012.

Appellee Sheriff filed his Answer with Compulsory Counterclaim and Crossclaim,^[28] praying for the dismissal of the subject Complaint, claiming in essence that there was no irregularity in the procedure adopted in causing the execution of the judgment in the NLRC case.

Appellees Necisario^[29] and Intoy, upon the other hand, filed their Answer with Motion to Dismiss^[30] alleging, among others, forum-shopping, considering that the appellant's Motion filed in the Petition for Cancellation contained the same averments and prayers/reliefs sought.

The court *a quo* on its Order^[31] dated 25 June 2012 dismissed the case for forum shopping, thus:

"X x x

Both this case and the complaint-in-intervention of plaintiff in LRC Case No. 75-V-11 asserted that she is the co-owner pro indiviso of one-half (½) of the subject property being married to Tan Ming Chuan, the registered owner of the subject property.

There is forum shopping when between an action pending before this court, and another one, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions, (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and a (c) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

The test in determining the presence of forum shopping is whether in the two or more cases pending, there is identity of (1) parties, (2) rights or causes of action and (3) relief/s sought. All of these are present in this case.

WHEREFORE, the motion to dismiss is GRANTED. The instant case is DISMISSED.

SO ORDERED.

X x x"

and which, on reconsideration^[32] of appellant, was likewise denied,^[33] hence this appeal^[34] raising the lone error for Our consideration-

THE TRIAL COURT ERRED IN DISMISSING THE CASE ON THE GROUND OF FORUM SHOPPING.^[35]

We resolve to deny the appeal.

It is undisputed that appellant sought to intervene in the Petition for Cancellation, reiterating the same allegations in the subject Complaint.^[36] Appellant argues however that there was no forum shopping as her Motion and consequently the Complaint in Intervention were denied. She insists that the motion is not an initiatory action, to which a certification of non forum shopping need not be filed.

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two (2) cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.^[37]

A reading of the Complaint in Intervention and the subject Complaint indubitably shows that there is identity of parties and subject matter, which is the property covered by TCT No. V-35593, as well as causes of action, which is to declare as null and void the Notice of Levy, the Certificate of Sale and Sheriff's Final Deed of Sale. This notwithstanding, the Complaint in Intervention contained the following statement in the Verification and Certification, which reads, -

"X x x

WONG LING LING, after being duly sworn to in accordance with law, depose and say that:

x x x

AND FURTHER CERTIFY, that:

I have not commenced any other action or filed any claim, involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein, if there is such pending action or claim, a complete statement of the present status thereof, and if I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) days therefrom to the court wherein aforesaid complaint or initiatory pleading has been filed.