



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated July 27, 2022 which reads as follows:

“G.R. No. 212692 (*Wilfredo C. Martinez, et al., represented by their Attorney-in-Fact Wilfredo C. Martinez, et al. vs. Annabelle Macion-Arbas, et al.*). — The propriety of the dismissal of a special civil action for *certiorari* is the core issue in the Appeal before the Court assailing the Court of Appeals’ (CA) Resolution¹ dated April 30, 2013 in CA-G.R. SP No. 07588.

On February 15, 2006, Annabelle Macion-Arbas (Annabelle) and Laureano Macion-Fernando (Laureano) filed against Elsa Macion-Vergara (Elsa) and Gil Vergara, Jr. a complaint for partition and accounting before the Regional Trial Court (RTC) Branch 40 of Dumaguete City docketed as Civil Case No. 13910.² The subject matter involved the estate of Calixta Ojastro-Cansilan (Calixta) consisting of a 197-square meter parcel of land denominated as Lot No. 982 and registered under Original Certificate of Title (OCT) No. 2495-A. Allegedly, Annabelle, Laureano, and Elsa are the only surviving heirs of Calixta. On August 5, 2008, the RTC Branch 40 directed the partition of the property without prejudice to the final determination of Calixta’s true heirs in proper special proceedings,³ thus:

WHEREFORE, premises considered, let there be a partition of Lot 982 covered by Original Certificate of Title No. 2495-A in favor of Laureano Macion Fernando, Annabelle Macion and Elsa Macion-Vergara in equal shares. The parties are directed to make the partition

¹ *Rollo*, pp. 38–41.

² *Id.* at 96–99

³ *Id.* at 18; 20; and 103–104.

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among themselves by proper instruments of conveyance subject to confirmation by this Court. Should there be no agreement, this Court shall proceed in accordance with Sections 3 to 6, Rule 69 of the 1997 Rules of Civil Procedure.

The parties are further ordered to mutually account for all benefits received and reimbursements for expenses made.

SO ORDERED.⁴

On November 27, 2012, Wilfredo C. Martinez, Thelma Martinez-Nieves, Aletha Martinez-Saile, Merulo Domingo, Lydia D. Minoza, Hespelo C. Domingo, Jaime Domingo, Noel Domingo, Gil C. Domingo, Lourdes Ariola Cansilan, Mercedito Cansilan, Elda C. Duran, Maribel C. Tayros, and Antonieta C. Cansilan (Wilfredo, et al.) filed against Annabelle, Laureano, Elsa and Gil (Annabelle, et al.) an action for nullity of settlement and quieting of title with damages before the RTC Branch 39 of Dumaguete City docketed as Civil Case No. 2012-14760. Wilfredo, et al. claimed that they are the successors-interest of Calixta's three (3) children, namely, Avelina Ojastro Cansilan-Martinez, Dolores Ojastro Cansilan-Domingo, and Esteban Ojastro Cansilan.⁵

On December 21, 2012, the RTC Branch 39 *motu proprio* dismissed the complaint on the ground that Wilfredo, et al. are not real parties-in-interest absent evidence as to their exact filiation to Calixta. Also, the RTC Branch 39 reasoned that it has no authority to interfere with the rulings of a co-equal court.⁶ Unsuccessful at a reconsideration, Wilfredo, et al. elevated the matter to the CA through a special civil action for *certiorari* docketed as CA-G.R. SP No. 07588 with prayer to remand the case for further proceedings.⁷ On April 30, 2013, the CA dismissed outright the Petition for *Certiorari* for being a wrong remedy. The CA explained that the RTC's Order dated December 21, 2012 is a final order which is a proper subject of an appeal,⁸ viz.:

The Order dated December 21, 2012, which dismissed the complaint in Civil Case No. 2012-14760 was a final, as distinguished from an interlocutory, order against which the proper remedy was an appeal in due course. *Certiorari*, as an extraordinary remedy, is not substitute for appeal due to its being availed of only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law.

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Section 5, Rule 46 in relation to Rule 65 of the Rules of Court allows the outright dismissal of a petition with specific reasons for such dismissal. In this case, the petition is dismissible for being the wrong remedy.

⁴ Id. at 103-104.

⁵ Id. at 18-19; and 73-86.

⁶ Id. at 56-61.

⁷ Id. at 44-55.

⁸ Id. at 38-41. Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap.

WHEREFORE, foregoing premises considered, the Court resolves to DISMISS this petition. Let the records of this case be removed from the docket of this Court.

SO ORDERED.⁹

Wilfredo, et al. sought reconsideration but was denied. Hence, this Petition for Review on *Certiorari*. Wilfredo, et al. argue that the RTC's Order dated December 21, 2012 in Civil Case No. 2012-14760 is considered a dismissal of the complaint without prejudice absent any contrary pronouncement. Furthermore, the grounds for the dismissal of the complaint do not bar the filing of a similar case. As such, the proper recourse is a special civil action for *certiorari*. On the other hand, Annabelle, et al. countered that the proper remedy against a final order is an ordinary appeal.¹⁰

The Petition is meritorious.

Prefatorily, it bears emphasis that the RTC Branch 39 dismissed the complaint in Civil Case No. 2012-14760 because Wilfredo, et al. are not real parties-in-interest and for non-interference with the rulings of a co-equal court. Case law provides that if the suit is not brought in the name of, or against, the real party in interest, the case may be dismissed on the ground that the complaint states no cause of action.¹¹ As aptly held in *Strongworld Construction Corporation v. Perello*,¹² such dismissal is without prejudice and does not bar the refiling of the complaint, thus:

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. **Logically, the nature of the dismissal founded on any of the preceding grounds is "with prejudice" because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action.**

Verily, the dismissal of petitioners' Complaint by the court *a quo* was not based on any of the grounds specified in Section 5, Rule 16 of the 1997 Revised Rules of Civil Procedure; rather, it was grounded on what was encapsulated in Section 1(g), Rule 16 of the 1997 Revised Rules of Civil Procedure. **As the trial court ratiocinated in its 9 January 1998 Order, the Complaint is not prosecuted by the proper party in interest. Considering the heretofore discussion, we can say that the order of dismissal was based on the ground that the Complaint states no cause of action. For this reason, the dismissal of**

⁹ Id. at 39-40.

¹⁰ Id. at 138.

¹¹ *Caro v. Sucaldito*, 497 Phil. 879 (2005); *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981 (2001); and *Balagtas v. Court of Appeals*, 375 Phil. 480, 489 (1999).

¹² 528 Phil. 1080 (2006).

petitioners' Complaint cannot be said to be a dismissal with prejudice which bars the refiling of the same action.¹³ (Emphasis supplied, citation omitted)

The Rules of Court is explicit that no appeal may be taken from an order dismissing an action without prejudice.¹⁴ Corollarily, the remedy available to the aggrieved party is to file a special civil action for *certiorari*.¹⁵ Here, Wilfredo, et al. availed the proper recourse before the CA to question the RTC's dismissal of their complaint on the ground of failure to state a cause of action. Verily, the CA committed a reversible error in its outright dismissal of the special civil action for *certiorari*.

FOR THESE REASONS, the Petition is **GRANTED**. The Court of Appeals' Resolution dated April 30, 2013 in CA-G.R. SP No. 07588 is **REVERSED**. The case is **REMANDED** to the Regional Trial Court, Branch 40 of Dumaguete City for further proceedings on the merits with dispatch.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

15 FEB 2023

¹³ Supra note 12 at 1097.

¹⁴ Section 1(h), Rule 41 of the Rules of Court.

¹⁵ *Philippine Export and Foreign Loan Guarantee Corporation v. Philippine Infrastructures, Inc.*, 464 Phil. 8 (2004).

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Regional Trial Court, Branch 39
Dumaguete City
(Civil Case No. 2012-14760)

HON. PRESIDING JUDGE (reg)
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