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Wilfredo V. Labitan
WILFREDO V. LABITAN
Division Clerk of Court
Third Division
APR 07 2016

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**JOEL CARDENAS, HEIR OF THE
LATE ELINAIDA L. ALCANTARA,**
represented by **ANTONIO IGNACIO, JR.,**
Petitioner,

G.R. No. 191079

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

- versus -

**HEIRS OF THE LATE SPOUSES
SIMPLICIA P. AGUILAR and
MAXIMO V. AGUILAR and
ATTY. NORMAN R. BUENO ,**
Respondents.

Promulgated:

March 2, 2016

Wilfredo V. Labitan

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x

DECISION

PEREZ, J.:

This is a Petition for Review on *Certiorari* filed pursuant to Rule 45 of the Revised Rules of Court, assailing the Orders¹ dated 13 October 2009 and 18 January 2010 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198. In its assailed Orders the RTC directed the execution of its 27 February 2009 Decision.

The Facts

On 8 November 2000, Elinaida L. Alcantara (Alcantara) obtained a loan from the Spouses Maximó and Simplicia Aguilar (Spouses Aguilar) in the amount of ₱3,000,000.00 with fixed interest of ₱720,000.00. As a

¹ Rollo, pp. 39-42; penned by Judge Erlinda Nicolas-Alvaro.

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security for the said obligation, Alcantara executed an agreement denominated as *Venta con Pacto de Retro* (Sale With Right to Repurchase)² in favor of the Spouses Domingo over a parcel of land with an area of 410 square meters and registered under Transfer Certificate of Title (TCT) No. T-37319³ under her name (subject property). It was agreed by the parties that the term of the loan shall be one year from the date of the execution of the contract on 8 November 2000 with a grace period of six months. After Alcantara failed to repurchase the subject property within the stipulated period, she sought for the extension of the period to exercise her right to repurchase which was granted by Melba A. Clavo de Comer, daughter of the Spouses Domingo, as shown in a letter 6 June 2002.⁴

In December 2002, Joel A. Cardenas (Cardenas), son of Alcantara, sought to exercise for himself, and on behalf of his mother, the redemption of the subject property by offering to pay the entire amount of the loan including the interest thereon, but it was refused by the Spouses Aguilar.

This prompted Alcantara to initiate Civil Case No. LP-02-0300 for the Reformation of Instrument and Specific Performance against the Spouses Aguilar, their daughter, Melba A. Clavo de Comer and her husband, Dan Clavo de Comer (Spouses de Comer) and Antonio Malinao, in his capacity as Register of Deeds of Las Piñas City. In her Complaint docketed as Civil Case No. LP-02-0300, plaintiff sought that the instrument denominated as *Venta con Pacto de Retro* be declared as equitable mortgage and to direct defendants Spouses Aguilar and Spouses de Comer to accept her offer to pay the loan and to release the mortgage constituted on the subject property.

After Alcantara passed away, she was substituted by her heir, Cardenas, who filed an Amended Complaint.⁵

Before the filing of the Amended Complaint, the counsel for the Spouses Aguilar also manifested that Maximo V. Aguilar likewise passed away by filing a Notice of Death with the trial court and serving a copy thereof on the opposing party. It was stated in the said notice that Maximo V. Aguilar is survived by his spouse, Simplicia P. Aguilar and his daughter, Melba A. Clavo de Comer and that both were already impleaded as original defendants in the complaint.

² Id. at 71-72; records, Vol. 1, p. 10.

³ Id. at 68-70; id. at 7-9.

⁴ Id. at 80 marked as Annex "K"; id. Vol. 1, p. 12, marked as Annex "E".

⁵ Id. at 60-65.

Subsequently defendants filed an Answer wherein they insisted that their transaction was not an equitable mortgage as claimed by the plaintiffs but a sale with a right to repurchase as clearly stipulated in the contract. Considering that Alcantara failed to exercise her right to repurchase the subject property within the period agreed upon by parties, defendants asked that the title thereon be consolidated in their names. In the alternative, defendants sought that the plaintiffs be directed to repurchase the property in the amount of ₱3,000,000.00 with an interest of 10% of the purchase price.

After the pre-trial conference, trial on the merits ensued.

On 27 February 2009, the RTC rendered a Decision⁶ in favor of the plaintiffs and declared that the contract entered into by the parties is equitable mortgage and not a sale with a right to repurchase. Accordingly, the court *a quo* directed the defendants to release the mortgage constituted on the subject property upon payment of the principal amount of the loan. The dispositive portion of the RTC Decision reads:

“WHEREFORE, premises considered, the court hereby declares that the contract entered into by the late Elinaida Alcantara is AN EQUITABLE MORTGAGE and NOT A SALE WITH RIGHT TO REPURCHASE. Accordingly, the parties are hereby ordered, as follows:

- (1) the substituted plaintiff is ordered to pay defendants the principal loan of ₱3,000,000.00; and
- (2) upon payment, the defendants are ordered to release the mortgage constituted on the property and to deliver the original copy of the owner's duplicate title of the property to the plaintiff.

SO ORDERED.

The period to file for a motion for reconsideration or for an appeal had lapsed but neither of the parties moved for the reconsideration of the decision nor appealed therefrom.

On 27 July 2009, defendants filed a Motion for Execution⁷ of the RTC Decision which was surprisingly opposed by the plaintiff on the ground that the original defendants (the Spouses Aguilar) in Civil Case No. LP-02-0300 were already dead and no proper substitution of the parties was effected by

⁶ Id. at 44-49.

⁷ Id. at 85-86.

the counsel as mandated by Section 16, Rule 3 of the Revised Rules of Civil Procedure.

Brushing aside the opposition of the plaintiff, the RTC, in an Order⁸ dated 13 October 2009, directed the issuance of the Writ of Execution.⁹

The Motion for Reconsideration filed by the plaintiff was likewise denied by the lower court in its Order¹⁰ dated 18 January 2010.

Arguing that this case involves a genuine question of law, plaintiff (now petitioner herein) elevated the case before the Court and raised the following issues:

The Issues

I.

WHETHER OR NOT A MOTION FOR EXECUTION CAN BE FILED BY A COUNSEL WHEN THE JUDGMENT OBLIGEEES WERE ALREADY DEAD AND NEITHER WAS THERE AN EXECUTOR OR ADMINISTRATOR APPOINTED BY THE COURT NOR AN HEIR SUBSTITUTED AS A PARTY TO THE CASE TO AUTHORIZE THE COUNSEL TO MOVE FOR THE EXECUTION OF THE JUDGMENT.

II.

WHETHER OR NOT THE COURT CAN GRANT A MOTION FOR EXECUTION FILED BY A COUNSEL WHEN THE JUDGMENT OBLIGEEES WERE ALREADY DEAD AND NEITHER WAS THERE AN EXECUTOR OR ADMINISTRATOR APPOINTED BY THE COURT NOR AN HEIR SUBSTITUTED AS A PARTY TO THE CASE.¹¹

The Court's Ruling

The resolution of this petition hinges on the propriety of the issuance of the Writ of Execution dated 13 October 2009.

In assailing the RTC Order dated 29 October 2009, petitioner averred that after the death of the original parties to the case, there was no proper substitution of the parties nor was there an appointment of an executor or

⁸ Records, Vol. II, pp. 954-955.

⁹ *Rollo*, pp. 87-90.

¹⁰ *Id.* at 41-42.

¹¹ *Id.* at 22-23.

administrator by the court. To petitioner, this constitutes a procedural *faux pas* which renders the proceedings before the lower court seriously infirmed.

Defendants before the trial court who are now respondents herein, on the other hand, insisted that after the death of Maximo V. Aguilar, a Notice of Death¹² was promptly filed by his counsel stating the fact of death and that he is survived by his spouse, Simplicia P. Aguilar, and daughter, Melba A. Clavo de Comer, who were both already impleaded as defendants to the case. While no notice of death was filed after the demise of Simplicia P. Aguilar, respondents argued that such procedural lapse is not fatal since the purpose of such notice is to acquire jurisdiction over the person of the substitute, which is no longer necessary in this case, because Melba A. Clavo de Comer was already part of the action after she was named as co-defendant upon the filing of the Amended Complaint.

After perusing the arguments of the parties, we find it perplexing why the petitioner, after going thru the process of filing the complaint and actively pursuing the case, and, eventually securing a favorable judgment, refused to have the said decision executed. After all, the reliefs mainly sought by the petitioner in his complaint, (*i.e.*, to declare the contract of sale with a right to repurchase as equitable mortgage and to direct the defendants to release the mortgage constituted on the property), were all granted by the court *a quo* as shown in its 27 February 2009 Decision. It is a source of wonder why instead of reveling in his success and pursuing an execution of the decision so as not to render his victory pyrrhic, petitioner inexplicably postured to sleep on his rights by not moving for the satisfaction of the judgment. And, when respondents took upon themselves the initiative to have the judgment executed, petitioner in all absurdity opposed it by hurling all possible procedural questions to prevent its satisfaction and even went to the extent of filing the instant petition before the Court.

Let this be a reminder to Atty. Erwin T. Daga, the counsel of the petitioner, not to trifle with court proceedings and needlessly waste the precious time and resources of the court by initiating and actively litigating a case, and, once a favorable judgment is obtained, taking the liberty to turn around completely to prevent its execution on grounds that are even without substance. Courts of law are created to settle the rights and obligations of the litigants and not to cater to every whim and caprice of the parties and their counsel. The remedies that are made available by statutes and the Rules to protect the interests of the parties must be pursued in good faith. A similar abuse of court processes in the future will be dealt with accordingly.

¹² Id. at 58.

Even granting that petitioner was in good faith in assailing the execution of the RTC Decision, his argument that the RTC has no jurisdiction to issue the Writ of Execution absent proper substitution still holds no water.

The pertinent provision of the Revised Rules of Court provides:

Section 16. *Death of party; duty of counsel.* – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The purpose behind the rule on substitution is the protection of the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.¹³

In the case at bar, we find that no right to procedural due process was violated when the counsel for the respondents failed to notify the court of the fact of death of Simplicia P. Aguilar and even if no formal substitution of parties was effected after the such death. As can be gleaned above, the rationale behind the rule on substitution is to apprise the heir or the

¹³ *Heirs of Bertuldo Hinog v. Hon. Melicor*, 495 Phil. 422, 438-439 (2005).

substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law. The said purpose was not defeated even if no proper substitution of party was made because Melba A. Clavo de Comer, the heir of the deceased Simplicia P. Aguilar, was already impleaded by petitioner as a party-defendant to Civil Case No. LP-02-0300 when the latter filed his Amended Complaint. For sure, petitioner is very much aware that despite the passing of the Spouses Aguilar, the case would still continue because de Comer, on her own behalf and as the legal representative of her deceased parents, possessed the authority to pursue the case to its end.

In *Vda. De Salazar v. Court of Appeals*,¹⁴ we ruled that **a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case.** In the cited case, we explained the rationale of our ruling and related it to the due process issue, to wit:

We are not unaware of several cases where we have ruled that a party having died in an action that survives, the trial held by the court without appearance of the deceased's legal representative or substitution of heirs and the judgment rendered after such trial, are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding. This general rule notwithstanding, in denying petitioner's motion for reconsideration, **the Court of Appeals correctly ruled that formal substitution of heirs is not necessary when the heirs themselves voluntarily appeared, participated in the case and presented evidence in defense of deceased defendant. Attending the case at bench, after all, are these particular circumstances which negate petitioner's belated and seemingly ostensible claim of violation of her rights to due process. We should not lose sight of the principle underlying the general rule that formal substitution of heirs must be effectuated for them to be bound by a subsequent judgment.** Such had been the general rule established not because the rule on substitution of heirs and that on appointment of a legal representative are jurisdictional requirements per se but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein. Viewing the rule on substitution of heirs in this light, the Court of Appeals, in the resolution denying petitioner's motion for reconsideration, thus expounded:

Although the jurisprudential rule is that failure to make the substitution is a jurisdictional defect, it should be noted that the purpose of this procedural rule is to comply with due process requirements. The original party having died, he could not continue to defend himself in court despite the

¹⁴ G.R. No. 121510, November 23, 1995, 250 SCRA 305, as cited in *Sps. Berot v. Siapno*, G.R. No. 188944, 9 July 2014, 729 SCRA 475, 488-491.



fact that the action survived him. For the case to continue, the real party in interest must be substituted for the deceased. The real party in interest is the one who would be affected by the judgment. It could be the administrator or executor or the heirs. In the instant case, the heirs are the proper substitutes. Substitution gives them the opportunity to continue the defense for the deceased. Substitution is important because such opportunity to defend is a requirement to comply with due process. Such substitution consists of making the proper changes in the caption of the case which may be called the formal aspect of it. Such substitution also includes the process of letting the substitutes know that they shall be bound by any judgment in the case and that they should therefore actively participate in the defense of the deceased. This part may be called the substantive aspect. This is the heart of the procedural rule because this substantive aspect is the one that truly embodies and gives effect to the purpose of the rule. It is this court's view that compliance with the substantive aspect of the rule despite failure to comply with the formal aspect may be considered substantial compliance. Such is the situation in the case at bench because the only inference that could be deduced from the following facts was that there was active participation of the heirs in the defense of the deceased after his death:

1. The original lawyer did not stop representing the deceased. It would be absurd to think that the lawyer would continue to represent somebody if nobody is paying him his fees. The lawyer continued to represent him in the litigation before the trial court which lasted for about two more years. A dead party cannot pay him any fee. With or without payment of fees, the fact remains that the said counsel was allowed by the petitioner who was well aware of the instant litigation to continue appearing as counsel until August 23, 1993 when the challenged decision was rendered;

2. After the death of the defendant, his wife, who is the petitioner in the instant case, even testified in the court and declared that her husband is already deceased. She knew therefore that there was a litigation against her husband and that somehow her interest and those of her children were involved;

3. This petition for annulment of judgment was filed only after the appeal was decided against the defendant on April

3, 1995, more than one and a half year (sic) after the decision was rendered (even if we were to give credence to petitioner's manifestation that she was not aware that an appeal had been made);

4. The Supreme Court has already established that there is such a thing as jurisdiction by estoppel. This principle was established even in cases where jurisdiction over the subject matter was being questioned. In the instant case, only jurisdiction over the person of the heirs is in issue. Jurisdiction over the person may be acquired by the court more easily than jurisdiction over the subject matter. Jurisdiction over the person may be acquired by the simple appearance of the person in court as did herein petitioner appear;

5. The case cited by the herein petitioner (Ferreria et al. vs. Manuela Ibarra vda. de Gonzales, et al.) cannot be availed of to support the said petitioner's contention relative to nonacquisition of jurisdiction by the court. In that case, Manolita Gonzales was not served notice and, more importantly, she never appeared in court, unlike herein petitioner who appeared and even testified regarding the death of her husband.¹⁵

Similarly in this case, the RTC had priorly acquired jurisdiction over the person of de Comer after she was served with summons as a party-defendant to the case and she continuously appeared and participated therein up to this point. Such jurisdiction previously acquired achieved the purpose of a formal substitution.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The assailed Orders of the Regional Trial Court are hereby **AFFIRMED**.

SO ORDERED.

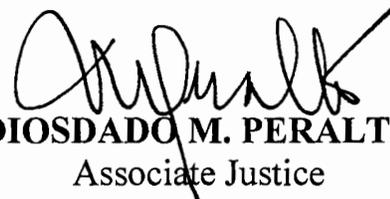


¹⁵ Id. at 308-310. (Citations omitted, emphasis supplied)


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. VARDEOLA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

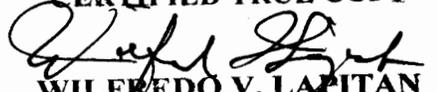
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

APR 07 2016