



Republic of the Philippines  
SUPREME COURT  
Baguio City

THIRD DIVISION

**HEIRS OF FAUSTINO MESINA  
and GENOVEVA S. MESINA, rep.  
by NORMAN MESINA,**  
Petitioners,

**G.R. No. 201816**

Present:

VELASCO, JR., *J.*, Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, *JJ.*

- versus -

**HEIRS OF DOMINGO FIAN, SR.,  
rep. by THERESA FIAN YRAY,  
ET AL.,**  
Respondents.

Promulgated:

APR 08 2013

*McCoy*

X-----X

**DECISION**

**VELASCO, JR., *J.*:**

**The Case**

Before Us is a Petition for Review under Rule 45 of the Decision<sup>1</sup> dated April 29, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 01366 and its Resolution dated April 12, 2012 denying reconsideration.

**The Facts**

The late spouses Faustino and Genoveva Mesina (spouses Mesina), during their lifetime, bought from the spouses Domingo Fian Sr. and Maria Fian (spouses Fian) two parcels of land on installment. The properties may be described as follows:

Parcel 1 - A parcel of land. Cadastral Lot No. 6791-Rem. situated in the Brgy. of Gungab, Poblacion, Albuera, Leyte. x x x Containing an area of ONE THOUSAND SIX HUNDRED THIRTY TWO (1.632) SQUARE METERS x x x.

<sup>1</sup> Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Victoria Isabel A. Paredes.

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Parcel 2 – A parcel of land, Cadastral Lot No. 6737-Rem, situated in the Brgy. of Gungab, Poblacion, Albuera, Leyte. x x x Containing an area of THREE THOUSAND SEVEN HUNDRED THIRTY (3,730) SQUARE METERS x x x.<sup>2</sup>

Upon the death of the spouses Fian, their heirs—whose names do not appear on the records, claiming ownership of the parcels of land and taking possession of them—refused to acknowledge the payments for the lots and denied that their late parents sold the property to the spouses Mesina. Meanwhile, the spouses Mesina passed away.

Notwithstanding repeated demands, the Heirs of Fian refused to vacate the lots and to turn possession over to the heirs of the spouses Mesina, namely: Norman S. Mesina (Norman), Victor S. Mesina (Victor), Maria Divina S. Mesina (Maria) and Lorna Mesina-Barte (Lorna). Thus, on August 8, 2005, Norman, as attorney-in-fact of his siblings Victor, Maria and Lorna, filed an action for quieting of title and damages before the Regional Trial Court (RTC), Branch 14 in Baybay, Leyte against the Heirs of Fian, naming only Theresa Fian Yray (Theresa) as the representative of the Heirs of Fian. The case, entitled *Heirs of Sps. Faustino S. Mesina & Genoveva S. Mesina, represented by Norman Mesina v. Heirs of Domingo Fian, Sr., represented by Theresa Fian Yray*, was docketed as Civil Case No. B-05-08-20. The allegations of the Complaint on the parties read:

1. Plaintiffs are the HEIRS OF SPS. FAUSTINO S. MESINO and GENOVEVA S. MESINA, and represented in this instance by NORMAN MESINA as shown by the Special Power of Attorneys x x x, of legal age, married, Filipino, and a resident of Poblacion Albuera, Leyte, where he may be served with court orders, notices, and other processes, while defendants are the HEIRS OF DOMINGO FIAN, SR., likewise of legal ages, Filipinos, and residents of Poblacion Albuera, Leyte, and respresented in this instance of THERESA FIAN YRAY, where she may be served with summons, court orders, notices, and other processes.<sup>3</sup>

Thereafter, or on September 5, 2005, respondent Theresa filed a Motion to Dismiss the complaint, arguing that the complaint states no cause of action and that the case should be dismissed for gross violation of Sections 1 and 2, Rule 3 of the Rules of Court, which state in part:

Section 1. *Who may be parties; plaintiff and defendant.* – Only natural or juridical persons, or entities authorized by law may be parties in a civil action. x x x

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<sup>2</sup> *Rollo*, p. 8.

<sup>3</sup> *Id.* at 50.

Section 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. x x x

She claims that the “**Heirs of Mesina**” could not be considered as a juridical person or entity authorized by law to file a civil action. Neither could the “**Heirs of Fian**” be made as defendant, not being a juridical person as well. She added that since the names of all the heirs of the late spouses Mesina and spouses Fian were not individually named, the complaint is infirmed, warranting its dismissal.

On November 24, 2005, petitioners filed their Opposition to the Motion to Dismiss.

### **Ruling of the RTC**

Finding merit in the motion to dismiss, the RTC, on November 22, 2005, granted the motion and dismissed the complaint, ruling that the Rules of Court is explicit that only natural or juridical persons or entities authorized by law may be parties in a civil action. Also, nowhere in the complaint are the Heirs of Fian individually named. The RTC Order reads:

Anent the Motion to Dismiss filed by defendant, Theresa Fian Yray through counsel, finding merit in such motion, the same is **granted**.

The Rules of Court is explicit that only natural or juridical persons or entities authorized by law may be parties in a civil action (Section 1, Rule 3, Revised Rules of Court). Certainly, the Heirs of Faustino s. Mesina and Genoveva S. Mesina, represented by Norman Mesina as plaintiffs as well as Heirs of Domingo Fian, Sr. represented by Theresa Fian Yray as defendants, do not fall within the category as natural or juridical persons as contemplated by law to institute or defend civil actions. Said heirs not having been individually named could not be the real parties in interest. Hence, the complaint states no cause of action.

Accordingly, the case is hereby **dismissed**.

SO ORDERED.<sup>4</sup>

On December 27, 2005, petitioners moved for reconsideration of the November 22, 2005 Order of the RTC. The next day, or on December 28, 2005, respondent Theresa filed her Vehement Opposition to the motion for reconsideration.

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<sup>4</sup> Records, p. 76. Penned by Judge Absalon U. Fulache.

On February 29, 2006, the RTC issued its Resolution denying the motion for reconsideration. The dispositive portion of the Resolution reads:

WHEREFORE, the motion prayed for must necessary fail.

SO ORDERED.<sup>5</sup>

Aggrieved, petitioners appealed to the CA.

### **Ruling of the CA**

In affirming the RTC, the CA, on April 29, 2011, rendered its Decision, ruling that all the heirs of the spouses Fian are indispensable parties and should have been impleaded in the complaint. The appellate court explained that this failure to implead the other heirs of the late spouses Fian is a legal obstacle to the trial court's exercise of judicial power over the case and any order or judgment that would be rendered is a nullity in view of the absence of indispensable parties. The CA further held that the RTC correctly dismissed the complaint for being improperly verified. The CA disposed of the appeal in this wise:

WHEREFORE, in view of all the foregoing, the appeal of [petitioners] is **DENIED** for lack of merit. The assailed November 22, 2005 Order and February 28, 2006 Resolution both issued by the Regional Trial Court, Branch 14 of Baybay, Leyte are **AFFIRMED**.

SO ORDERED.<sup>6</sup>

Petitioners filed their Motion for Reconsideration, which was denied by the CA in its Resolution dated April 12, 2012.

Hence, this petition.

### **Assignment of Errors**

Petitioner now comes before this Court, presenting the following assigned errors, to wit:

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<sup>5</sup> Id. at 98.

<sup>6</sup> *Rollo*, p. 15.

- A. THE [CA] ERRED IN AFFIRMING THE ORDER AND RESOLUTION X X X OF RTC, BAYBAY, LEYTE IN DISMISSING THE CASE ON THE GROUND THAT THE COMPLAINT STATES NO CAUSE OF ACTION;
- B. [PETITIONERS] HAVE SUBSTANTIALLY COMPLIED WITH THE RULE ON VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; AND
- C. CASES SHOULD BE DECIDED ON THE MERITS AND NOT ON MERE TECHNICALITIES.<sup>7</sup>

### The Court's Ruling

The petition is meritorious.

As regards the issue on failure to state a cause of action, the CA ruled that the complaint states no cause of action because all the heirs of the spouses Fian are indispensable parties; hence, they should have been impleaded in the complaint.

The CA, affirming the RTC, held that the dismissal of the complaint is called for in view of its failure to state a cause of action. The CA reasoned that:

Without the presence of all the heirs of spouses Fian as defendants, the trial court could not validly render judgment and grant relief to [petitioners]. x x x **The absence of an indispensable party renders all subsequent actions of the court null and void** for want of authority to act, not only as to the absent parties but even as to those present. Hence, **the court a quo correctly ordered for the dismissal of the action on the ground that the complaint failed to name or implead all the heirs of the late [spouses Fian].**<sup>8</sup>

Failure to state a cause of action refers to the insufficiency of the pleading. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

- (a) The legal right of the plaintiff;
- (b) The correlative obligation of the defendant; and
- (c) The act or omission of the defendant in violation of said right.<sup>9</sup>

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<sup>7</sup> Id. at 28, 32, 34.

<sup>8</sup> Id. at 13.

<sup>9</sup> See *Turner v. Lorenzo Shipping Corporation*, G.R. No. 157479, November 24, 2010, 636 SCRA 13, 30.

By a simple reading of the elements of a failure to state a cause of action, it can be readily seen that the inclusion of Theresa's co-heirs does not fall under any of the above elements. The infirmity is, in fact, not a failure to state a cause of action but a **non-joinder of an indispensable party**.

Non-joinder means the "failure to bring a person who is a necessary party [or in this case an indispensable party] into a lawsuit."<sup>10</sup> An indispensable party, on the other hand, is a party-in-interest without whom no final determination can be had of the action, and who shall be joined either as plaintiff or defendant.<sup>11</sup>

As such, this is properly a non-joinder of indispensable party, the indispensable parties who were not included in the complaint being the other heirs of Fian, and not a failure of the complaint to state a cause of action.

Having settled that, Our pronouncement in *Pamplona Plantation Company, Inc. v. Tinghil* is instructive as regards the proper course of action on the part of the courts in cases of non-joinder of indispensable parties, viz:

**The non-joinder of indispensable parties is not a ground for the dismissal of an action.** At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order. **The remedy is to implead the non-party claimed to be indispensable.**<sup>12</sup> x x x (Emphasis Ours.)

Thus, the dismissal of the case for failure to state a cause of action is improper. What the trial court should have done is to direct petitioner Norman Mesina to implead all the heirs of Domingo Fian, Sr. as defendants within a reasonable time from notice with a warning that his failure to do so shall mean dismissal of the complaint.

Anent the issue on defective verification, Section 4, Rule 7 of the Rules of Court provides as follows:

Sec. 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

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<sup>10</sup> BLACK'S LAW DICTIONARY 1154 (9<sup>th</sup> ed., 2009).

<sup>11</sup> *Pascual v. Robles*, G.R. No. 182645, December 15, 2010, 638 SCRA 712, 719; citing *Lotte Phil. Co., Inc. v. Dela Cruz*, G.R. No. 166302, July 28, 2005, 464 SCRA 591.

<sup>12</sup> G.R. No. 159121, February 3, 2005, 450 SCRA 421, 433.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge **or** based on authentic records. (Emphasis Ours.)

The alleged defective verification states that:

I, NORMAN S. MESINA, legal age, married, Filipino, and a resident of Poblacion, Albuera, Leyte, after having been duly sworn to in accordance with law, hereby depose and say that:

x x x x

2. The allegations herein are true and correct to the best of our knowledge;<sup>13</sup> x x x

Both the RTC and the CA found said verification defective, since the phrase “or based on authentic records,” as indicated under the second paragraph of Sec. 4, Rule 7 as afore-quoted, was omitted.

We do not agree.

That the verification of the complaint does not include the phrase “or based on authentic records” does not make the verification defective. Notably, the provision used the disjunctive word “or.” The word “or” is a disjunctive article indicating an **alternative**.<sup>14</sup> As such, “personal knowledge” and “authentic records” need not concur in a verification as they are to be taken separately.

Also, verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, as in the case at hand, “the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served.”<sup>15</sup>

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<sup>13</sup> *Rollo*, p. 53.

<sup>14</sup> *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council*, G.R. No. 171101, November 22, 2011, 660 SCRA 525, 551; citing *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422.

<sup>15</sup> *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 293.

**WHEREFORE**, premises considered, the petition is **GRANTED**. The assailed April 29, 2011 Decision and April 12, 2012 Resolution of the CA in CA-G.R. CV No. 01366, and the November 22, 2005 Order and February 29, 2006 Resolution of the RTC, Branch 14 in Baybay, Leyte, dismissing the complaint in Civil Case No. B-05-08-20, are hereby **REVERSED** and **SET ASIDE**. Petitioner Norman Mesina is **ORDERED** to implead all the Heirs of Domingo Fian, Sr. as defendants in said civil case within thirty (30) days from notice of finality of this Decision. Failure on the part of petitioner Mesina to comply with this directive shall result in the dismissal of Civil Case No. B-05-08-20. Upon compliance by petitioner Mesina with this directive, the RTC, Branch 14 in Baybay, Leyte is **ORDERED** to undertake appropriate steps and proceedings to expedite adjudication of the case.


**SO ORDERED.**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice



WE CONCUR:



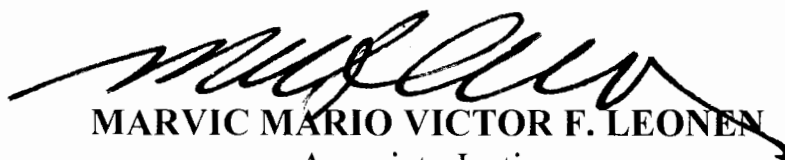
**DIOSDADO M. PERALTA**  
Associate Justice



**ROBERTO A. ABAD**  
Associate Justice




**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
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  
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