



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES,  
represented by the REGIONAL  
EXECUTIVE DIRECTOR,  
DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES,  
REGION III,

Petitioner,

- versus -

HEIRS OF ENRIQUE ORIBELLO, JR.  
and THE REGISTER OF DEEDS OF  
OLONGAPO CITY,

Respondents.

G.R. No. 199501

Present:

CARPIO, J., Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

MAR 06 2013 *HM Cabalete/Projecto*

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DECISION

CARPIO, J.:

The Case

This petition for review<sup>1</sup> assails the 29 April 2011 Decision<sup>2</sup> and 16 November 2011 Resolution<sup>3</sup> of the Court of Appeals in CA-G.R. CV No. 90559. The Court of Appeals denied petitioner Republic of the Philippines' (petitioner) appeal of the Order of the Regional Trial Court, Olongapo City, Branch 72,<sup>4</sup> which dismissed petitioner's action for reversion and cancellation of Original Certificate of Title (OCT) No. P-5004 in the name of Enrique Oribello, Jr. (Oribello).

<sup>1</sup> Under Rule 45 of the Rules of Court.

<sup>2</sup> *Rollo*, pp. 46-53. Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

<sup>3</sup> *Id.* at 55-56. Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

<sup>4</sup> *Id.* at 61-62. Penned by Acting Presiding Judge Josefina D. Farrales.

### **The Facts**

The present controversy involves a parcel of land situated in Nagbaculao, Kalaklan, Olongapo City, which was once classified as forest land by the Bureau of Forest Development. The property was originally occupied by a certain Valentin Fernandez (Valentin) in 1968 by virtue of a Residential Permit issued by the same government office.

Upon Valentin's death, his son, Odillon Fernandez (Odillon), continued to occupy the property, together with spouses Ruperto and Matilde Apog. Sometime in 1969, Odillon sold the property to a certain Mrs. Florentina Balcita who, later on, sold the same property to Oribello. Oribello filed a Miscellaneous Sales Application with the Department of Environment and Natural Resources (DENR), which denied the application since the land remained forest land.

On 20 February 1987, the subject property was declared open to disposition under the Public Land Act. Thus, Oribello filed another Miscellaneous Sales Application on 6 April 1987.

On 27 March 1990, the Director of Lands issued an Order for the issuance of a patent in favor of Oribello. On even date, Miscellaneous Sales Patent No. 12756 and OCT No. P-5004 were issued to Oribello.

Matilde Apog (Apog) and Aliseo San Juan (San Juan),<sup>5</sup> claiming to be actual occupants of the property, protested with the DENR the issuance of the sales patent and OCT in favor of Oribello. They sought the annulment of the sales patent, arguing that Oribello and Land Inspector Dominador Laxa (Laxa) committed fraud and misrepresentation in the approval of the Miscellaneous Sales Application of Oribello. They alleged that Laxa submitted a false report to the Director of Lands, by stating that there were no other claimants to the property and that Oribello was the actual occupant thereof, when the contrary was true.

After investigation, the Regional Executive Director of the DENR found substantial evidence that fraud and misrepresentation were committed in the issuance of the sales patent in favor of Oribello, warranting a reversion suit.

On 25 March 1992, the Office of the Solicitor General, representing petitioner, instituted a complaint for reversion and cancellation of title before the Regional Trial Court of Olongapo City, docketed as Civil Case No. 225-0-92. The case was thereafter consolidated with Civil Case No. 233-0-91, a complaint for recovery of possession filed by Oribello against Apog and San Juan.

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<sup>5</sup> In other parts of the records, he is referred to as "Eliseo San Juan."

During the trial, petitioner marked numerous documentary evidence and presented several witnesses on various hearing dates.<sup>6</sup>

In an Order dated 20 December 1996, the trial court warned petitioner on the possible effect of its non-appearance on the next scheduled hearing, thus:

WHEREFORE, let the continuation of the reception of evidence for the Republic of the Philippines be reset to February 14, 21 and 28, 1997, all at 10:00 o'clock in the morning, as previously scheduled.

**The Solicitor General is warned that should his designated lawyer or any of his assistants fail to appear on the dates above-stated, the Court will be constrained to consider the presentation of evidence for the Republic of the Philippines as terminated.**

Atty. Dumpit, therefore, is advised that he bring his witnesses on said dates to testify for the defendants Matilde Apog and Eliseo San Juan should the Solicitor General fail to appear and present evidence.

X X X X

SO ORDERED.<sup>7</sup> (Emphasis supplied)

On the hearing of 4 April 1997, Atty. Oscar Pascua, representing petitioner, presented a witness on the stand.

For petitioner's failure to appear on the hearing of 12 September 1997, the trial court issued an Order<sup>8</sup> on even date holding as follows:

On July 25, 1997, this Court issued an Order, quoted as follows:

X X X X

On several occasions when these cases were set for trial, neither Atty. Barcelo nor Atty. Pascua appeared, constraining the Court to postpone the hearing. The actuations of both lawyers result to delay in the early termination of these cases which have been pending since 1992.

X X X X

**WHEREFORE, the Republic of the Philippines is hereby deemed to have abandoned the case for the government.**

Attorney Dumpit for the defendant Matilde Apog, et al., is hereby required to manifest in writing on whether or not he is adopting the evidence already presented by the Republic of the Philippines, and if so, to

<sup>6</sup> 15 July 1994, 14 October 1994, 16 February 1996, 13 September 1996, 6 December 1996, and 4 April 1997.

<sup>7</sup> *Rollo*, pp. 368-369.

<sup>8</sup> Penned by Judge Leopoldo T. Calderon, Jr.

make his offer of evidence within 30 days from today. Atty. Leyco is given 10 days from receipt of a copy of his offer to file his comment or opposition. Let the reception of evidence, if there be any on any part of Enrique Oribello, be set on October 24, 1997 at 10:00 a.m. as previously scheduled. And in addition thereto on November 21, and December 5, 1997 also both at 10:00 a.m. To give way to the filing of these pleadings, cancel the hearing scheduled for October 3, 1997.

Upon receipt of proof from the Post Office by this Court which will show that Atty. Pascua has received a copy of the Order dated July 25, 1997, the Motion to hold him in contempt will be deemed submitted for resolution. Furnish Atty. Barcelo, the Solicitor General, the Executive Regional Director, DENR, R-III, Angeles City, and Atty. Oscar Pascua, a copy of this Order. Attys. Dumpit and Leyco are both notified in open court of this Order.

SO ORDERED.<sup>9</sup>

The trial of the consolidated cases continued and the reception of evidence of the private parties proceeded.

However, in its Order of 21 February 2005, the trial court dismissed the consolidated cases without prejudice for non-substitution of the deceased plaintiff (Oribello) and his counsel, to wit:

Considering that the plaintiff's counsel is already dead, and the plaintiff is likewise dead already, there being no substitution of party-plaintiffs or any record showing the heirs or party in interest, these cases are dismissed without prejudice.<sup>10</sup>

Petitioner moved for reconsideration, contending that the Order applied exclusively to Civil Case No. 233-0-91 (for recovery of possession) and did not affect Civil Case No. 225-0-92 (for reversion of property). Petitioner prayed that it be allowed to present its evidence.

Acting favorably on the motion, the trial court allowed the continuation of the presentation of petitioner's evidence in its Order dated 29 June 2005.<sup>11</sup>

Aggrieved, Oribello's heirs filed a Manifestation and Motion, bringing to the attention of the trial court the previous 12 September 1997 Order declaring petitioner to have abandoned the reversion case. Oribello's heirs pointed out that from the time petitioner received the Order in 1997, it did nothing to question the same, making the Order final.

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<sup>9</sup> *Rollo*, pp. 57-59.

<sup>10</sup> *Id.* at 60.

<sup>11</sup> *Id.* at 67.

In its Resolution of 12 July 2006, the trial court recalled its 29 June 2005 Order, and declared instead:

Finding merit in defendants' Motion and Manifestation, the Order dated 29 June 2005 granting the Motion for Reconsideration filed by the Solicitor General is recalled and the above-entitled case is DISMISSED.

SO RESOLVED.<sup>12</sup>

Petitioner appealed to the Court of Appeals.

### **The Ruling of the Court of Appeals**

The Court of Appeals denied petitioner's appeal. The Court of Appeals held "that the remedy of appeal is no longer available" to petitioner. The appellate court agreed with respondents that petitioner has lost its right to participate in the proceedings of Civil Case No. 225-0-92 when it failed to question the trial court's 12 September 1997 Order, declaring it to have abandoned the case. As a consequence of petitioner's inaction, such order inevitably became final.

Moreover, the Court of Appeals ruled that petitioner is barred by laches and estoppel for failing to challenge the 12 September 1997 Order after almost a decade from receipt thereof. The appellate court stated that "while the general rule is that an action to recover lands of public domain is imprescriptible, said right can be barred by laches or estoppel."

The Court of Appeals disposed of the case as follows:

**WHEREFORE**, the foregoing premises considered, the instant appeal is hereby DENIED for lack of merit.

**SO ORDERED.**<sup>13</sup> (Emphasis in the original)

The Court of Appeals denied the motion for reconsideration.

### **The Issues**

Petitioner anchors the present petition on the following grounds:

1. Interlocutory orders are not subject of appeal.
2. The consolidated cases, without any order of severance, cannot be subject of multiple appeals.

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<sup>12</sup> Id. at 62. Penned by Acting Judge Josefina D. Farrales.

<sup>13</sup> Id. at 53.

3. There can be no private ownership over an unclassified public forest.

### **The Ruling of the Court**

#### *Is the 12 September 1997 Order interlocutory?*

Petitioner contends that the 12 September 1997 Order of the trial court, deeming it to have abandoned the case, is interlocutory in nature; thus, is not appealable.<sup>14</sup> Respondents argue otherwise, maintaining that such Order is a dismissal of the complaint on the ground of failure to prosecute which is, under the Rules,<sup>15</sup> considered an adjudication on the merits, and hence appealable.

We agree with petitioner.

A final order is defined as “one which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court.”<sup>16</sup>

Conversely, an interlocutory order “does not dispose of the case completely but leaves something to be decided upon”<sup>17</sup> by the court. Its effects are merely provisional in character and substantial proceedings have

<sup>14</sup> Section 1, Rule 41 of the Rules of Court provides:

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

**No appeal may be taken from:**

x x x x

**(c) An interlocutory order;**

x x x x

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (Emphasis supplied)

<sup>15</sup> Section 3, Rule 17 of the Rules of Court provides:

SEC. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court’s own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

<sup>16</sup> *RCBC v. Magwin Marketing Corp.*, 450 Phil. 720, 737 (2003).

<sup>17</sup> *Silverio, Jr. v. Court of Appeals*, G.R. No. 178933, 16 September 2009, 600 SCRA 1, 14, citing *Tan v. Republic*, G.R. No. 170740, 25 May 2007, 523 SCRA 203, 210-211; *RCBC v. Magwin Marketing Corp.*, supra.

to be further conducted by the court in order to finally resolve the issue or controversy.<sup>18</sup>

Based on the records, petitioner has presented testimonial evidence on various hearing dates and marked numerous documents during the trial of Civil Case No. 225-0-92. Such acts do not manifest lack of interest to prosecute. Admittedly there was delay in this case. However, such delay is not the delay warranting dismissal of the complaint. To be a sufficient ground for dismissal, delay must not only be lengthy but also unnecessary resulting in the trifling of court processes.<sup>19</sup> There is no proof that petitioner intended to delay the proceedings in this case, much less abuse judicial processes.

While petitioner failed to appear on the hearing of 12 September 1997, such failure does not constitute a ground for the dismissal of the reversion complaint for failure to prosecute. Petitioner's non-appearance on that date should simply be construed as a waiver of the right to present additional evidence.<sup>20</sup>

We note that prior to the issuance of the 12 September 1997 Order, the trial court already warned petitioner on the likely adverse effect of its non-appearance on the next hearing date. If petitioner fails to attend the next scheduled hearing, the trial court would consider petitioner's presentation of evidence as terminated. Termination of presentation of a party's evidence does not equate to dismissal of the complaint for failure to prosecute. In fact, the trial court merely "deemed" petitioner to have abandoned the case without stating expressly and unequivocally that the complaint for reversion was dismissed. Had the trial court declared, in no uncertain terms, that the reversion suit was dismissed for failure to prosecute, there is no doubt that petitioner would have questioned such ruling, as it now did with respect to the trial court's 29 June 2005 Order.

While it is within the trial court's discretion to dismiss *motu proprio* the complaint on the ground of plaintiff's failure to prosecute, it must be exercised with caution. Resort to such action must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence (or the lack thereof) of the plaintiff to proceed therein.<sup>21</sup> As the Court held in *Gomez v. Alcantara*,<sup>22</sup> if a lesser sanction would achieve the same result, then dismissal should not be resorted to.

<sup>18</sup> *Spouses Carpo v. Chua*, 508 Phil. 462, 476 (2005).

<sup>19</sup> *Calalang v. Court of Appeals*, G.R. No. 103185, 22 January 1993, 217 SCRA 462, 473.

<sup>20</sup> See *Sandoval v. House of Representative Electoral Tribunal*, G.R. No. 190067, 9 March 2010, 614 SCRA 793, 806; *Constantino v. Court of Appeals*, 332 Phil. 68, 75 (1996); *Republic v. Sandiganbayan*, 325 Phil. 762, 785 (1996).

<sup>21</sup> *Gomez v. Alcantara*, G.R. No. 179556, 13 February 2009, 579 SCRA 472, 483.

<sup>22</sup> G.R. No. 179556, 13 February 2009, 579 SCRA 472.

Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, i.e., equivalent to default or non-appearance in the case, **the courts should consider lesser sanctions which would still amount to achieving the desired end.** In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.<sup>23</sup> (Emphasis supplied)

Notably, the trial court, even after its supposed "dismissal" of the case for petitioner's abandonment, continued to recognize petitioner's personality in its proceedings. In fact, in its Order of 16 January 1998, well beyond the "dismissal" on 12 September 1997, the trial court directed the service of such order to the Solicitor General, to wit:

x x x x

Should Atty. Dumpit fail to submit the said offer of evidence, it will be deemed a waiver on his part to do so. Atty. Leyco announced that he is presenting evidence for and in behalf of the defendants Oribello in **Civil Case No. 225-0-92 and as plaintiff in Civil Case No. 233-0-91.**

To give way to the filing of said pleadings, cancel the hearing on February 20, 1998. Let the reception of evidence for the plaintiff Oribellos be set on March 20, 1998 at 9:00 a.m.. Attys. Leyco and Dumpit are notified in open court. **Furnish a copy of this order the Solicitor General, DENR Office in Angeles City,** as well as Atty. Pascua.<sup>24</sup> (Emphasis supplied)

In addition, the above Order states that Oribello's counsel was presenting evidence on the two consolidated cases. This means that Oribello himself continued to recognize the pendency of the reversion suit (Civil Case No. 225-0-92), contrary to his subsequent allegation that such case has already been dismissed.

*Are the consolidated cases subject to multiple appeals?*

Section 1, Rule 31 of the Rules of Court provides:

SECTION 1. *Consolidation.* — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

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<sup>23</sup> Id. at 484.

<sup>24</sup> *Rollo*, p. 370.



Consolidation is a procedural device to aid the court in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties.<sup>25</sup> To promote this end, the rule allows the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases.<sup>26</sup> The Court explained, thus:

In the context of legal procedure, the term "consolidation" is used in three different senses:

- (1) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (quasi-consolidation)
- (2) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (actual consolidation)
- (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (consolidation for trial)<sup>27</sup>

In the present case, the complaint for reversion filed by petitioner (Civil Case No. 225-0-92) was consolidated with the complaint for recovery of possession filed by Oribello (Civil Case No. 223-0-91). While these two cases involve common questions of law and fact,<sup>28</sup> each action retains its separate and distinct character. The reversion suit settles whether the subject land will be reverted to the State, while the recovery of possession case determines which private party has the better right of possession over the subject property. These cases, involving different issues and seeking different remedies, require the rendition and entry of separate judgments. The consolidation is merely for joint trial of the cases. Notably, the complaint for recovery of possession proceeded independently of the reversion case, and was disposed of accordingly by the trial court.

Since each action does not lose its distinct character, severance of one action from the other is not necessary to appeal a judgment already rendered in one action. There is no rule or law prohibiting the appeal of a judgment or part of a judgment in one case which is consolidated with other cases. Further, severance is within the sound discretion of the court for convenience or to avoid prejudice. It is not mandatory under the Rules of

<sup>25</sup> *Republic of the Philippines v. Sandiganbayan*, G.R. No. 152375, 13 December 2011, 662 SCRA 152, 190.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 191-192.

<sup>28</sup> These are whether the sales patent issued in favor of Oribello is valid and whether there was fraud and misrepresentation in the issuance thereof.

Court that the court sever one case from the other cases before a party can appeal an adverse ruling on such case.


*Is the property unclassified public forest?*

In its petition, petitioner contended that the subject property remains unclassified public forest, incapable of private appropriation. In its complaint, petitioner alleged that Oribello committed fraud and misrepresentation in acquiring the subject property.

This Court is not a trier of facts. Fraud is a question of fact.<sup>29</sup> Whether there was fraud and misrepresentation in the issuance of the sales patent in favor of Oribello calls for a thorough evaluation of the parties' evidence. Thus, this Court will have to remand the reversion case to the trial court for further proceedings in order to resolve this issue and accordingly dispose of the case based on the parties' evidence on record.

**WHEREFORE**, the Court **GRANTS** the petition **IN PART** and **SETS ASIDE** the assailed Decision and Resolution of the Court of Appeals. The reversion case is remanded to the trial court for further proceedings. The trial court is ordered to resolve the reversion case with utmost dispatch.

**SO ORDERED.**



**ANTONIO T. CARPIO**

Associate Justice

**WE CONCUR:**



**ARTURO D. BRION**


Associate Justice

<sup>29</sup>

*Sampaco v. Lantud*, G.R. No. 163551, 18 July 2011, 654 SCRA 36, 50; *Rementizo v. Heirs of Pelagia Vda. de Madarieta*, G.R. No. 170318, 15 January 2009, 576 SCRA 109, 117; *Esguerra v. Trinidad*, G.R. No. 169890, 12 March 2007, 518 SCRA 186, 194.

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

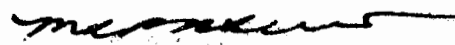
### ATTESTATION

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.

  
**ANTONIO T. CARPIO**  
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