



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

APR 10 2015

THIRD DIVISION

LIM TECK CHUAN,

G.R. No. 155701

Petitioner,

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

SERAFIN UY and LEOPOLDA
CECILIO, LIM SING CHAN @
HENRY LIM,

Promulgated:

Respondents.

March 11, 2015.

X-----*[Signature]*-----X

DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*¹ under Rule 45 filed by Lim Teck Chuan (petitioner) assailing the Orders dated April 25, 2002² and October 21, 2002³ of the Regional Trial Court (RTC) of Lapu-lapu City, Branch 27, in Civil Case No. 4786-L, which dismissed the case upon a joint motion of respondents Serafin Uy (Serafin) and Leopolda Cecilio (Leopolda) despite an opposition and manifestation of the petitioner to have his counterclaim prosecuted in the same action, and denied the petitioner's motion for reconsideration for being barren of merit, respectively.

The antecedent facts are as follows:

¹ Rollo, pp. 3-32.

² Issued by Presiding Judge Leopoldo V. Cafete; id. at 235.

³ Id. at 286.

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The subject matter of the present controversy is a piece of land known as Lot 5357 with an area of 33,610 square meters, covered by Transfer Certificate of Title (TCT) No. T-0500, situated in *Barrio Agus*, Lapu-lapu City, Cebu, owned and registered under the name of Antonio Lim Tanhu (Antonio), married to Dy Ochay.

Lot 5357 was sold by Antonio to the spouses Francisco Cabansag (Francisco) and Estrella Cabansag (Spouses Cabansag) as evidenced by a Deed of Sale executed on January 8, 1966. Apparently, Francisco failed to transfer the title of the property to their names because of his work and frequent travels abroad.⁴

In 1988, Spouses Cabansag sold the lot to Serafin, as evidenced by a Deed of Sale dated April 8, 1988. To pave the way for the transfer of title to Serafin's name, Spouses Cabansag attempted to have the same transferred under their names first. However, Francisco failed to do so as he lost the owner's copy of TCT No. T-0500 together with other documents pertaining to the sale of the subject lot. This prompted Serafin to exert efforts to secure copies of the lost documents himself. On May 15, 1996, Serafin filed a petition before the RTC, docketed as Cadastral Case No. 21 praying for the issuance of a new owner's duplicate TCT in his name, thereby cancelling TCT No. T-0500 in the name of Antonio.⁵

Serafin's petition for the issuance of a new owner's copy of TCT No. T-0500 was raffled to the RTC of Lapu-lapu City, Branch 27, then sitting as a cadastral court (Cadastral Court). After due notice and hearing, the Cadastral Court issued an Order⁶ on June 14, 1996 directing the Register of Deeds of Lapu-lapu City to issue a new owner's duplicate copy of TCT No. T-0500.

However, the aforesaid order was recalled and nullified on September 3, 1996⁷ on the ground that the petitioner filed an *Opposition and/or Motion for Reconsideration with Manifestation for Special Appearance*⁸ dated August 22, 1996 alleging that he is one of the six legitimate descendants of Antonio; and that the original owner's copy of TCT No. T-0500 was not lost and has always been in his custody. The court further directed the petitioner to deposit the said owner's copy of TCT No. T-0500 with said court.

⁴ Id. at 35-36.

⁵ Id. at 287-289.

⁶ Id. at 302.

⁷ Id. at 307.

⁸ Id. at 303-305.

In the meantime, on August 2, 1996, Lim Sing Chan *alias* Henry Lim (Henry) executed an *Affidavit of Sole Adjudication/Settlement of the Estate of Antonio Lim Tanhu with Deed of Sale*⁹ (Affidavit of Self-Adjudication) claiming that he is the only surviving heir of Antonio. In the same document, Henry sold Lot 5357 to Leopolda in the amount of ₱500,000.00.

With this turn of events, Serafin filed on July 25, 1997 a Complaint¹⁰ for **quieting of title, surrender of owner's copy of certificate of title, declaration of nullity of affidavit of adjudication and sale, annulment of tax declaration, and other reliefs with a prayer for preliminary injunction** before the RTC, docketed as Civil Case No. 4786-L. Impleaded as defendants were Leopolda, Henry, and the herein petitioner.

Leopolda filed her *Answer*¹¹ (*with counterclaim, and cross-claim against Henry*), asserting that she was the buyer in good faith and for value of Lot 5357. She alleged that the said property was never encumbered to any person during the lifetime of Antonio; that the deed of sale in favor of Spouses Cabansag was simulated and spurious; and that the said document was never registered with the proper government agency, nor was it ever annotated on the certificate of title covering the said property. She claimed that the lot in question was sold to her as evidenced by the Affidavit of Self-Adjudication executed by Henry; that she caused the issuance of a new tax declaration over the said property in her name; that since then, she has been in open, actual and material possession of the subject lot in the concept of an owner.

For his part, the petitioner averred in his *Answer*¹² (*with counterclaim, and cross-claims against Leopolda and Henry*), that Lot 5357 was never transferred nor encumbered to any person during Antonio's lifetime. The deed of sale in favor of Spouses Cabansag was simulated and spurious, and was intended to defraud the estate of Antonio. Furthermore, the petitioner questioned Henry's claim that he was an heir of Antonio, much less the only surviving heir of the latter. Corollarily, the petitioner questioned the validity of Henry's Affidavit of Self-Adjudication and Leopolda's claim of title to the subject property.

On November 11, 1997, Leopolda filed her *Answer*¹³ to the petitioner's cross-claim. She basically reiterated her allegations raised in her Answer to Serafin's complaint.

⁹ Id. at 135-136.

¹⁰ Id. at 34-44.

¹¹ Id. at 55-64.

¹² Id. at 65-81.

¹³ Id. at 114-116.

Henry did not file an answer to any of the claims against him.

On December 22, 1998, the pre-trial conference¹⁴ was conducted where the parties agreed to the following stipulation of facts:

[T]hat Antonio Lim Tanhu was the registered owner of Lot 5357 of the Cadastral Survey of Opon located in Lapu-lapu City[;] that Antonio Lim Tanhu died on April 13, 1991[;] that Antonio Lim Tanhu was succeeded upon his death by his six children, namely, the defendant Lim Teck Chuan, Lim Sing Tai, Helen Lim, Lenesita Lim, Warlito Lim and Michael Lim Tan Ho[;] that the defendant Lim Sing Chan is actually a fictitious person[;] that there exists an ancient document denominated as Deed of Absolute Sale of Lot 5357 executed on January 8, 1966 by Antonio Lim Tanhu in favor of the spouses Francisco Cabansag and Estrella M. Cabansag (Exhibit A)[;] that there also exists a document denominated as Deed of Absolute Sale (Exhibit B) of Lot 5357 executed on April 8, 1988 by the spouses Francisco Cabansag and Estrella M. Cabansag in favor of the plaintiff[;] and that there exists, too, a document denominated as Affidavit of [Sale] Adjudication/Settlement of Estate of Antonio Lim Tanhu with Deed of Sale executed on May 2, 1996 by a certain Lim Sing Chan (Exhibit 1-Cecilio). x x x.¹⁵

The parties also agreed to the following issues:

1. Whether or not the plaintiff has valid causes of action for quieting of title, declaration of nullity of documents of sale and tax declarations, reconveyance of title and damages against the defendants[;]
2. Whether or not the defendants Leopolda Cecilio and Lim Teck Chuan have valid counterclaims against the plaintiff; and
3. Whether or not the defendant Lim Teck Chuan has a valid cross-claim against the defendant Leopolda Cecilio.¹⁶

Thereafter, the pre-trial order was amended such that it should not be considered as established and stipulated facts that Henry is a fictitious person and that the Deed of Sale of Lot 5357 purportedly executed by Antonio on January 8, 1966 is genuine and authentic since there were actually no admissions made on these circumstances.¹⁷

¹⁴ Id. at 117-118.

¹⁵ Id. at 117.

¹⁶ Id.

¹⁷ Id. at 142.

In the same Order¹⁸ dated July 17, 1999, the RTC denied Serafin's *motion for summary judgment*¹⁹ because under the circumstances, there were actually genuine issues of fact to be resolved and passed upon by the court.

Eventually, the RTC set the initial trial of the case on March 28, 2001.²⁰ However, it was postponed upon motion of Leopolda's counsel and upon the manifestation of Serafin's counsel that there was an on-going negotiation for an amicable settlement. For his part, the petitioner's counsel manifested that the petitioner was not involved in any negotiation for amicable settlement. The scheduled hearing was reset to July 11, 2001²¹ and later to November 12, 2001.²²

On September 20, 2001, Serafin and Leopolda submitted a *Joint Motion to Dismiss*.²³ They averred that:

1. That the case at [bench] is filed by the Plaintiff Serafin Uy against the defendants for "quieting of title, surrender of owner of certificate of title, declaration of nullity of affidavit of adjudication and sale annulment of tax declaration, and other reliefs consistent with law, justice and equity[]";
2. That in the case at bench, Plaintiff Serafin Uy seeks the quieting of title on his right over Lot 5357 of the Cadastral Survey of Opon situated at Barangay Agus, Lapu-lapu City, in view of the affidavit of adjudication and Sale dated August 2, 1996 (Annex "F") of the Complaint, and Tax Decl. No. 01532 issued in the name of Leopolda Cecilio both of which documents affected Lot 5357 (Annex G to the Complaint);
3. That Plaintiff Serafin Uy and Defendant Leopolda Cecilio have amicably settled their differences in the case at bench and Def. Leopolda Cecilio has agreed to waive her counterclaim for damages in the instant case;
4. That Plaintiff Serafin Uy has already secured a certificate of title to Lot No. 5357 in his name dated July 26, 2001, and has also agreed for the cancellation of the same, and for issuance of a new one, over said Lot 5357, in their common names;
5. That whatever claim defendant Lim Teck Chuan may have on said Lot No. 5357, the same may be ventilated by said defendant in an appropriate independent action that he may initiate and file[.]

¹⁸ Id.
¹⁹ Id. at 119-131.
²⁰ Id. at 154.
²¹ Id. at 155.
²² Id. at 156.
²³ Id. at 166-167.

P R A Y E R

WHEREFORE, this Honorable Court is most respectfully prayed and humbly implored to dismiss the Complaint and the respective counterclaims of the defendants in the case at bench.²⁴

On October 4, 2001, the petitioner filed his *Opposition/Comment*²⁵ praying for the denial of the Joint Motion to Dismiss on the ground of bad faith, and to prohibit Serafin and Leopolda from undertaking any further transaction involving the subject lot. The pertinent portion of his opposition reads as follows:

1. That the [petitioner] opposes the ‘Joint Motion to Dismiss’ filed by [Serafin] and [Leopolda] on the grounds:

1.1 that there [is] BAD FAITH on the part of [Serafin] and [Leopolda];

1.2. That the [petitioner] was not involved in any amicable settlements between [Serafin] and [Leopolda] because both [Serafin] and [Leopolda] connived to MISLEAD this Honorable Court and to DEFRAUD the estate of [Antonio];

1.3. That the [petitioner] has valid counterclaims against [Serafin] for moral damages of P 5,000,000[.00]; exemplary damages of P 1,200,000[.00]; and Attorney’s fees of P 50,000[.00]; on the ground that [Serafin] maliciously and deliberately presented to this Honorable Court the FALSIFIED AND FICTITIOUS ‘deed of sale’ PURPORTEDLY executed by [Antonio] in favor of [Francisco];

1.4. That the [petitioner] has valid cross[-]claims against Cross-defendants Lim Sing Chan alias Henry Lim whose real name is Henry Lim Ormoc, and [Leopolda] for moral damages of P 5,000,000[.00] each, attorney’s fees of P 50,000[.00] each, and exemplary damages of P 1,000,000[.00] for [Henry] and P 1,600,000[.00] for [Leopolda] because [Henry] and [Leopolda] connived with each other to defraud the estate of [Antonio] on the ground that [Henry] MISREPRESENTED himself as an heir of [Antonio] while [Leopolda] has KNOWLEDGE of such MISREPRESENTATION;

1.5. That the [petitioner] manifest[s] to this Honorable Court of his preference that the above-counterclaims and cross-claims be resolved in the present case[.]²⁶

²⁴ Id. at 166.

²⁵ Id. at 168-173.

²⁶ Id. at 168-169.

The petitioner further averred that the transfer of Antonio's title under TCT No. T-0500 in the name of Serafin is irregular and illegal since the true owner's copy of TCT No. T-0500 remained in his possession.

Henry continued to remain silent.

On October 10, 2001, Serafin filed his Reply²⁷ to the comment/opposition of the petitioner. He substantially averred that:

1. With the end in view of registering Lot 5357 in his name, he instituted the instant case due to the existence of certain documents affecting his title thereto, namely: Henry's **Affidavit of Self-Adjudication with Deed of Sale** dated August 2, 1996 naming Leopolda as the buyer, and **Tax Declaration No. 01532** issued in the name of the latter;
2. Under his **Affidavit of Self-Adjudication**, Henry already transferred whatever right and interest he had on the subject lot to Leopolda. On the other hand, by reason of the amicable settlement between him (Serafin) and Leopolda, the latter waived and abandoned all her rights to Lot 5357. *Ergo*, as far as Leopolda is concerned, her waiver negated all the legal consequences of Tax Declaration No. 01532 and Henry's Affidavit of Self-Adjudication. Since the same were the very documents that cast clouds on his (Serafin) title over Lot 5357, his main causes of action in the case at bench had become moot and academic as his title to the said lot had been quieted;
3. The petitioner was impleaded because of the following points: *a)* he alleged that he is one of the heirs of the late Antonio; *b)* he contested the claim of Henry that the latter is the only surviving heir of said decedent, and prayed upon the court to declare Henry as an impostor; and *c)* he challenged the genuineness and due execution of the deed of absolute sale between Antonio and Spouses Cabansag;
4. Aside from his claim for damages, the petitioner's counterclaim sought the nullification of the Deed of Absolute Sale dated January 8, 1966 between Antonio and Spouses Cabansag which required the impleading of persons who were not parties in the case. These persons included Spouses Cabansag who was indispensable party to any action for the annulment of the deed which was executed in their favor. However, to implead the said

²⁷ Id. at 187-192.

persons, there was a need to summon them so that the court can acquire jurisdiction over them - and in order that they can be summoned, there was a need for the petitioner to file a formal complaint against them;

5. Moreover, the cross-claim of the petitioner against Henry can also be resolved in a separate action for the declaration of the true heirs of Antonio wherein all the heirs of the latter will be impleaded, and where the petitioner can prove that he was indeed one of the heirs of said decedent – especially so that there is yet no judicial or extra-judicial declaration as to who were Antonio’s heirs;
6. The dismissal of the case will not affect the rights of the petitioner because whatever claim he had on the subject lot and against any party may be ventilated in an appropriate and separate action.

On November 6, 2001, the petitioner, through counsel, filed his *Motion to Implead Indispensable Parties and Supplemental Opposition to Joint Motion to Dismiss*.²⁸ Invoking Section 11²⁹ of Rule 3 of the Rules of Court, the petitioner averred that there is a need to implead Spouses Cabansag in order that a final determination of all the issues could be had in the case.

Acting on the Joint Motion to Dismiss, the RTC issued the assailed Order³⁰ dated April 25, 2002 granting the same and denying the petitioner’s motion to implead Spouses Cabansag. The order is quoted as follows:

Going over the arguments of the parties, the Court finds the arguments of the movants as tenable. For what is the use of so continuously litigating this case when [Serafin] admits and confirms that the principal reliefs he prayed for have already been met or satisfied as his title to the property in question has already been quieted with him having “already secured a certificate of title to Lot No. 5357 in his name dated July 26, 2001, and has also agreed for the cancellation of the same, and for the issuance of a new one, over said Lot 5357, in their common names.” In fact, even without said reliefs having been met or satisfied, nobody, not even the courts of justice, can compel a party-litigant in a civil action like [Serafin] to so continuously litigate his case if he does not want to anymore.

²⁸ Id. at 231-234.

²⁹ Sec. 11. *Misjoinder and non-joinder of parties*. – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

³⁰ *Rollo*, p. 235.

Finding therefore, the subject motion to dismiss to be proper and in order, this case is ordered dismissed so with the respective counterclaims of the defendants. Considering however, that [the petitioner] is not a party and even opposed the subject motion to dismiss, the dismissal of his counterclaims and cross-claim is without prejudice to give him his day in court. And with this pronouncement of dismissal, the motion to implead indispensable parties of [the petitioner] becomes moot and academic and therefore is denied.³¹

On May 30, 2002, the petitioner filed a Motion for Reconsideration³² which was denied in the Order³³ dated October 21, 2002.

Aggrieved, the petitioner went up to this Court *via* a petition for review on *certiorari* under Rule 45 raising the lone assignment of error that:

THE LOWER COURT ERRED IN DISMISSING CIVIL CASE 4786-L UPON A JOINT MOTION TO DISMISS FILED BY THE RESPONDENTS WHO ARE PLAINTIFF AND ONE OF THE DEFENDANTS, RESPECTIVELY, IN THE AFOREMENTIONED CASE DESPITE THE OPPOSITION BY HEREIN PETITIONER AND THE MANIFESTATION OF THE LATTER OF HIS PREFERENCE MADE WITHIN FIFTEEN (15) DAYS FROM THE JOINT MOTION TO DISMISS, TO HAVE HIS COUNTERCLAIM, AS WELL AS HIS CROSS-CLAIM, PROSECUTED IN THE SAME ACTION, IN ACCORDANCE WITH SECTION 2, RULE 17 OF THE 1997 RULES OF CIVIL PROCEDURE.³⁴

The petitioner faults the RTC for dismissing the case in its entirety in spite of his counterclaim and cross-claim. He asserts that within 15 days from notice of the filing of the joint motion to dismiss, he filed his opposition thereto and expressed his preference to have his *counterclaim* and *cross-claim* be resolved in the same action. Therefore, pursuant to the provisions of Section 2, Rule 17 of the Rules of Court, his timely expression of such preference should be enough for the trial court not to dismiss the case in its entirety, and to limit its action to the dismissal of the complaint.

Preliminarily, the respondents question the petitioner's recourse to this Court in filing the instant petition alleging that no appeal may be taken from an order of the RTC dismissing an action without prejudice.³⁵ Nonetheless, the Rules of Court do not prohibit any of the parties from filing a Rule 45 petition with this Court in case only questions of law are raised or

³¹ Id.

³² Id. at 236-243.

³³ Id. at 286.

³⁴ Id. at 15.

³⁵ RULES OF COURT, Rule 41, Section 1(g).

involved.³⁶ In *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*,³⁷ the Court explained that:

Section 2(c), Rule 41 of the Rules of Court categorically provides that in all cases where only questions of law are raised, the appeal from a decision or order of the Regional Trial Court shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. Section 2(c) of Rule 41 of the Rules of Court reads:

SEC. 2. *Modes of appeal.* –

(a) *Ordinary appeal.* – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

Section 1 of Rule 45 provides:

SECTION 1. *Filing of petition with Supreme Court.*
– A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their

³⁶ *Republic v. Sunvar Realty Development Corporation*, G.R. No. 194880, June 20, 2012, 674 SCRA 320, 332.

³⁷ 501 Phil. 516 (2005).

relation to each other and to the whole, and the probability of the situation.³⁸ (Citation omitted)

Considering that the issue in the instant case is clearly one of law as it calls for the correct application of the Rules of Court, the petitioner's direct resort to this Court is proper.

The Court now looks into the propriety of the order of the RTC in dismissing the case. Needless to state, the Court is again confronted with the issue of whether the dismissal of the complaint, specifically upon motion of the plaintiff under Section 2 of Rule 17 of the Rules of Court also calls for the dismissal of the defendant's counterclaim, as in the case at bar.

Rule 17 of the Rules of Civil Procedure provides the following:

SECTION 1. *Dismissal upon notice by plaintiff.* – A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

SECTION 2. *Dismissal upon motion of plaintiff.* – Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

SECTION 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.

³⁸ Id. at 525-526.

SECTION 4. *Dismissal of counterclaim, cross-claim, or third-party complaint.* – The provisions of this Rule shall apply to the dismissal of any counterclaim, cross-claim, or third-party complaint. A voluntary dismissal by the claimant by notice as in Section 1 of this Rule, shall be made before a responsive pleading or a motion for summary judgment is served or, if there is none, before the introduction of evidence at the trial or hearing.

The RTC granted the Joint Motion to Dismiss upon the behest of Serafin, the plaintiff therein on the main ground that the case had become moot and academic since his title to Lot 5357 had been allegedly quieted and the reliefs prayed for were obtained. In the Order dated October 21, 2002 denying the motion for reconsideration, the RTC elucidated that:

The Court in issuing the dismissal order dated April 25, 2002 had already made its position on the matter very clearly such that it finds no reason to disturb the subject order. As clarified, a party-litigant in a civil action like the plaintiff herein, cannot be compelled to so continuously litigate his case if he does not want to anymore as was obtaining in this case. More so that the principal reliefs prayed for in the complaint had already been served as was so admitted by the plaintiff. Being so, this Court finds it repugnant to go on with the hearing of movant's-defendant's counterclaim for what is to be countered by the movant when the claim of the plaintiff, at his own instance, had already been dismissed it having been served and satisfied as aforesated. And this is so because what is contemplated under the Rules authorizing the hearing of defendant's counterclaim is when the dismissal is not at the instance of the plaintiff.³⁹

As can be gleaned from the assailed orders, the RTC erred when it dismissed the case when the present rules state that the dismissal shall be limited only to the complaint. A dismissal of an action is different from a mere dismissal of the complaint. For this reason, since only the complaint and not the action is dismissed, the defendant in spite of said dismissal may still prosecute his counterclaim in the same action.⁴⁰ The case of *Pinga v. Heirs of German Santiago*⁴¹ is quite instructive which this Court finds worth reiterating. In *Pinga*, the Court clearly stated that the dismissal of the complaint does not necessarily result to the dismissal of the counterclaim, abandoning the rulings in *Metals Engineering Resources Corporation v. Court of Appeals*,⁴² *International Container Terminal Services, Inc. v. Court of Appeals*,⁴³ and *BA Finance Corporation v. Co.*⁴⁴ The Court held that:

³⁹ *Rollo*, p. 286.

⁴⁰ Herrera, Remedial Law, Volume I, 2007 Edition, p. 1058.

⁴¹ 526 Phil. 868 (2006).

⁴² G.R. No. 95631, October 28, 1991, 203 SCRA 273.

⁴³ G.R. No. 90530, October 7, 1992, 214 SCRA 456.

⁴⁴ G.R. No. 105751, June 30, 1993, 224 SCRA 163.

At present, even Section 2, concerning dismissals on motion of the plaintiff, now recognizes the right of the defendant to prosecute the counterclaim either in the same or separate action notwithstanding the dismissal of the complaint, and without regard as to the permissive or compulsory nature of the counterclaim.

In his commentaries on the 1997 Rules of Civil Procedure, Justice Regalado expounds on the effects of the amendments to Section 2 and 3 of Rule 17:

2. Under this revised section [2], where the *plaintiff* moves for the dismissal of his complaint to which a counterclaim has been interposed, the dismissal shall be limited to the complaint. Such dismissal shall be without prejudice to the right of the defendant to either prosecute his counterclaim in a separate action or to have the same resolved in the same action. Should he opt for the first alternative, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint. Should he choose to have his counterclaim disposed of in the same action wherein the complaint had been dismissed, he must manifest such preference to the trial court within 15 days from notice to him of plaintiff's motion to dismiss. *These alternative remedies of the defendant are available to him regardless of whether his counterclaim is compulsory or permissive.* x x x.⁴⁵ (Italics in the original)

In the instant case, the petitioner's preference to have his counterclaim (and cross-claims) be prosecuted in the same action was timely manifested. The records show that Serafin and Leopolda furnished the petitioner's counsel with a copy of their *Joint Motion to Dismiss* by posting it (*via* registered mail) on September 19, 2001.⁴⁶ Said motion was filed in court the following day.⁴⁷ On October 4, 2001, the petitioner filed his *Opposition/Comment* thereto.⁴⁸ Copies of the said opposition were personally served upon the opposing parties on the same date.⁴⁹ In paragraph 1.5⁵⁰ of said opposition, the petitioner expressed his preference to have his counterclaim and cross-claim prosecuted in the same case, as he thus stated:

1.5 That the undersigned defendant manifest to this Honorable Court of his preference that the above[] counterclaims and cross-claims be resolved in the present case.⁵¹

⁴⁵ Supra note 41, at 885-886.

⁴⁶ *Rollo*, p. 167.

⁴⁷ *Id.* at 166.

⁴⁸ *Id.* at 168-173.

⁴⁹ *Id.* at 173.

⁵⁰ *Id.* at 169.

⁵¹ *Id.*

There are valid reasons why the petitioner vehemently objected to the dismissal of the case upon the joint motion of Serafin and Leopolda and insisted to have his counterclaim prosecuted in the same action.

Serafin instituted the instant case due to the existence of certain documents affecting his title, namely: Henry's Affidavit of Self-Adjudication with Deed of Sale which names Leopolda as the buyer; and Tax Declaration No. 01532 which was issued in the name of the latter. In his Affidavit of Self-Adjudication, Henry transferred whatever right and interest he had on the subject lot to Leopolda. Subsequently, by reason of the amicable settlement between Serafin and Leopolda, the latter waived and abandoned all her rights to Lot 5357.

On the other hand, the petitioner asserts that the subject property was never transferred nor encumbered to any person during Antonio's lifetime. He insists that the deed of sale in favor of Spouses Cabansag is simulated and spurious, and was intended to defraud the estate of Antonio. Further, he asserts that said Spouses Cabansag are mere creations of Serafin.

Forthwith, the foregoing contentions touch on the very merits of the case which this Court is not prepared to rule upon for want of sufficient factual basis since this case was dismissed by the RTC even before the parties were able to present their evidence on the merits. Nonetheless, the records show that Serafin had been aware of the petitioner's claim over the property as descendants of Antonio and Dy Ochay even before the institution of this case, which was why he impleaded the petitioner in this case. Then, the Joint Motion to Dismiss was filed by Serafin and Leopolda on the ground that both parties were able to settle their differences. It is rather intriguing that in said joint motion, it was alleged that Serafin was already able to secure a certificate of title in his name dated July 26, 2001 and that both parties agreed for its cancellation and have a title over said property issued in their common names.⁵² Clearly, the petitioner was peremptorily left out of the picture. From the case's inception, the petitioner's interests and that of his siblings over the subject property were vigilantly defended as evidenced by the numerous and exchange of pleadings made by the parties. It can not therefore be denied that the petitioner has certainly valid defenses and enforceable claims against the respondents for being dragged into this case. Thus, the petitioner's manifestation of his preference to have his counterclaim prosecuted in the same action is valid and in accordance with Section 2, Rule 17 of the Rules of Court.


⁵² Id. at 166.


WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Orders dated April 25, 2002 and October 21, 2002 of the Regional Trial Court of Lapu-lapu City, Branch 27 in Civil Case No. 4786-L are **MODIFIED** in that the counterclaim of Lim Teck Chuan as defendant in Civil Case No. 4786-L is **REINSTATED**. The Regional Trial Court is **ORDERED** to hear and decide Lim Teck Chuan's counterclaim with dispatch.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

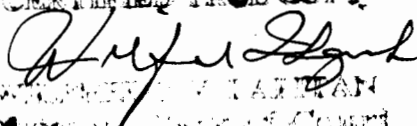
WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

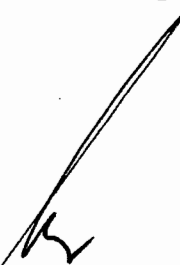

FRANCIS H. JARDELEZA
Associate Justice

CERTIFIED TRUE COPY

WILSON V. ALARCON
Clerk of Court
Regional Trial Court

APR 10 2015

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, 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

