



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOSE Z. MORENO,

Petitioner,

- versus -

G.R. No. 217744

Present:

RENE M. KAHN, CONSUELO
MORENO KAHN-HAIRE,
RENE LUIS PIERRE KAHN,
PHILIPPE KAHN, MA.
CLAUDINE KAHN
MCMAHON, and THE
REGISTER OF DEEDS OF
MUNTINLUPA CITY,

Respondents.

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., JJ.

Promulgated:

30 JUL 2018

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated September 24, 2014 and the Resolution³ dated March 17, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129232, which affirmed the Orders dated January 18, 2012⁴ and October 11, 2012⁵ of the Regional Trial Court of Muntinlupa City, Branch 205 (RTC) in Civil Case No. 12-004 dismissing *motu proprio* the complaint filed by petitioner Jose Z. Moreno (Jose) for non-compliance with Article 151 of the Family Code.

¹ *Rollo*, Vol. 1, pp. 28-69

² *Id.* at 71-81. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicedan and Agnes Reyes-Carpio, concurring.

³ *Id.* at 83-84.

⁴ *Id.* at 378. Penned by Judge Amelia A. Fabros.

⁵ *Id.* at 445-450.

The Facts

Jose alleged that since May 1998 and in their capacity as lessees, he and his family have been occupying two (2) parcels of land covered by Transfer Certificate of Title (TCT) Nos. 181516 and 181517⁶ (subject lands) co-owned by his full-blooded sister, respondent Consuelo Moreno Kahn-Haire (Consuelo) and his nephews and nieces (Consuelo's children), respondents Rene M. Kahn (Rene), Rene Luis Pierre Kahn (Luis), Philippe Kahn (Philippe), and Ma. Claudine Kahn-McMahon (Claudine; collectively, respondents).⁷

Around April or May 2003, through numerous electronic mails (emails) and letters, respondents offered to sell to Jose the subject lands for the amount of US\$200,000.00 (US\$120,000.00 to be received by Consuelo and US\$20,000.00 each to be received by her children),⁸ which Jose accepted. Notably, the agreement was made verbally and was not immediately reduced into writing, but the parties had the intention to eventually memorialize the same via a written document. Over the next few years, Jose made partial payments to respondents by paying off the shares of Rene, Luis, Philippe, and Claudine, leaving a remaining balance of US\$120,000.00 payable to Consuelo.⁹

However, in July 2010, Consuelo decided to "cancel" their agreement, and thereafter, informed Jose of her intent to convert the earlier partial payments as rental payments instead. In response, Jose expressed his disapproval to Consuelo's plan and demanded that respondents proceed with the sale, which the latter ignored.¹⁰ He then claimed that on July 26, 2011, without his consent, Consuelo, Luis, Philippe, and Claudine sold¹¹ their shares over the subject lands to Rene, thereby consolidating full ownership of the subject lands to him. Consequently, TCT Nos. 181516 and 181517 were cancelled and new TCTs, *i.e.*, TCT Nos. 148026 and 148027,¹² were issued in Rene's name. Upon learning of such sale, Jose sent a demand letter¹³ to Rene, and later on to Consuelo, Luis, Philippe, and Claudine,¹⁴ asserting his right to the subject lands under the previous sale agreed upon. As his demands went unheeded, Jose brought the matter to the barangay *lupon* for conciliation proceedings between him and Rene only, since Consuelo, Luis, Philippe, and Claudine are all living abroad. As no settlement was agreed upon,¹⁵ Jose was constrained to file the subject

⁶ *Id.* at 204-205.

⁷ Consuelo owns 6/10 portion of the subject lands, while her children, Rene, Luis, Philippe, and Claudine own 1/10 portion each (see *id.* at 72).

⁸ See *id.* at 167-170.

⁹ *Id.* at 72. See also *id.* at 165-170.

¹⁰ See *id.* at 170-171.

¹¹ See Deed of Absolute Sale: *id.* at 226-228.

¹² *Id.* at 195-200.

¹³ See letter dated December 14, 2011: *id.* at 229-231.

¹⁴ See letter dated January 6, 2011 (should be 2012): *id.* at 234-236.

¹⁵ See Endorsement dated January 6, 2012: *id.* at 232.

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complaint¹⁶ for specific performance and cancellation of titles with damages and application for temporary restraining order and writ of preliminary injunction, docketed as Civil Case No. 12-004.¹⁷

The RTC Proceedings

In an Order¹⁸ dated January 18, 2012, the RTC *motu proprio* ordered the dismissal of Jose's complaint for failure to allege compliance with the provision of Article 151 of the Family Code which requires earnest efforts to be made first before suits may be filed between family members.

Jose moved for reconsideration,¹⁹ arguing that: (a) the RTC cannot *motu proprio* order the dismissal of a case on the ground of failure to comply with a condition precedent, *i.e.*, non-compliance with Article 151 of the Family Code; (b) Article 151 does not apply to the instant case, contending that while Consuelo is indeed his full-blooded sister, her co-defendants, namely his nephews Rene, Luis, and Philippe, and niece Claudine are not considered members of the same family as him and Consuelo; and (c) assuming Article 151 of the Family Code applies, he has complied with the earnest efforts requirement as he tried convincing Consuelo to change her mind through email correspondences, and even underwent barangay conciliation proceedings with Rene.²⁰

In an Order²¹ dated October 11, 2012, the RTC denied Jose's motion, ruling, *inter alia*, that Article 151 of the Family Code applies, despite the fact that Consuelo had other co-defendants (*i.e.*, her children) in the suit, as the dispute, which led to the filing of the case, was mainly due to the disagreement between full-blooded siblings, Jose and Consuelo.²²

Aggrieved, Jose filed a petition for *certiorari*²³ before the CA.

The CA Ruling

In a Decision²⁴ dated September 24, 2014, the CA affirmed the RTC ruling. It held that the *motu proprio* dismissal of Jose's complaint was proper in light of Article 151 of the Family Code which mandates such dismissal if it appears from the complaint/ petition that no earnest efforts

¹⁶ Dated January 9, 2012; *id.* at 162-193.

¹⁷ *Id.* at 72-73. See also *id.* at 170-176.

¹⁸ *Id.* at 378.

¹⁹ See motion for reconsideration dated February 1, 2012; *id.* at 379-398.

²⁰ See *id.* at 382-396.

²¹ *Id.* at 445-450.

²² See *id.* at 449.

²³ Dated March 26, 2013. *Id.* at 451-488.

²⁴ *Id.* at 71-81.

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were made between party-litigants who are members of the same family.²⁵ The CA likewise agreed with the RTC's finding that Jose's main cause of action was against his full-blooded sister, Consuelo, and as such, the fact that his nephews and nieces were impleaded as co-defendants does not take their situation beyond the ambit of Article 151.²⁶ Finally, the CA opined that the barangay conciliation proceedings cannot be deemed as substantial compliance with the earnest efforts requirement of the law as the participants therein were only Jose and Rene, and without the other defendants.²⁷

Undaunted, Jose moved for reconsideration,²⁸ which was, however, denied in a Resolution²⁹ dated March 17, 2015; hence, this petition.

The Issues Before the Court

The issues for the Court's resolution are whether or not: (a) the CA correctly affirmed the RTC's *motu proprio* dismissal of Jose's complaint; and (b) Article 151 of the Family Code is applicable to this case.

The Court's Ruling

The petition is meritorious.

Article 151 of the Family Code reads:

Article 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Palpably, the wisdom behind the provision is to maintain sacred the ties among members of the same family. "As pointed out by the Code Commission, it is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family and it is known that a lawsuit between close relatives generates deeper bitterness than between strangers."³⁰ Thus, a party's failure to comply with this provision before

²⁵ See *id.* at 75-76.

²⁶ See *id.* at 78.

²⁷ See *id.* at 78-79.

²⁸ See motion for reconsideration dated October 22, 2014; *id.* at 85-106

²⁹ *id.* at 83-84.

³⁰ *Martinez v. Martinez*, 500 Phil. 332, 339 (2005), citing *Magbaleta v. Gonong*, 167 (168) Phil 229, 231 (1977).

filing a complaint against a family member would render such complaint premature;³¹ hence, dismissible.

This notwithstanding, the Court held in *Heirs of Favis, Sr. v. Gonzales*³² that non-compliance with the earnest effort requirement under Article 151 of the Family Code is not a jurisdictional defect which would authorize the courts to dismiss suits filed before them *motu proprio*. Rather, it merely partakes of a condition precedent such that the non-compliance therewith constitutes a ground for dismissal of a suit should the same be invoked by the opposing party at the earliest opportunity, as in a motion to dismiss or in the answer. Otherwise, such ground is deemed waived, *viz.*:

The base issue is whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made.

The appellate court committed egregious error in dismissing the complaint. The appellate courts' decision hinged on Article 151 of the Family Code x x x.

x x x x

The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the 1997 Rules of Civil Procedure, which provides:

Section 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(j) That a condition precedent for filing the claim has not been complied with.

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court *motu proprio*. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

³¹ *Martinez v. Martinez*, id. at 339.

³² 724 Phil. 465 (2014).

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Section 1, Rule 9 provides for only four instances when the court may *motu proprio* dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action. x x x.

x x x x

Why the objection of failure to allege a failed attempt at a compromise in a suit among members of the same family is waivable was earlier explained in the case of *Versoza v. Versoza* ([*Versoza*] 135 Phil. 84, 94 [1986]), a case for future support which was dismissed by the trial court upon the ground that there was no such allegation of infringement of Article 222 of the Civil Code, the origin of Article 151 of the Family Code. While the Court ruled that a complaint for future support cannot be the subject of a compromise and as such the absence of the required allegation in the complaint cannot be a ground for objection against the suit, the decision went on to state thus:

x x x x

Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action. *Versoza* was cited in a later case as an instance analogous to one where the conciliation process at the *barangay* level was not priorly resorted to. Both were described as a “**condition precedent for the filing of a complaint in Court.**” In such instances, the consequence is precisely what is stated in the present Rule. Thus:

The defect may however be waived by failing to make seasonable objection, in a motion to dismiss or answer, the defect being a mere procedural imperfection which does not affect the jurisdiction of the court.

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. **In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.**

Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after filing their answer to petitioner’s complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to *motu proprio* order the dismissal of petitioner’s complaint.⁵³
(Emphases and underscoring supplied)

⁵³ Id. at 471-476; citations omitted.

In this case, a plain reading of the records shows that the RTC ordered the dismissal of Jose's complaint against respondents for his alleged failure to comply with Article 151 of the Family Code – even before respondents have filed a motion or a responsive pleading invoking such non-compliance. As such ground is not a jurisdictional defect but is a mere condition precedent, the courts *a quo* clearly erred in finding that a *motu proprio* dismissal was warranted under the given circumstances.

Even assuming *arguendo* that respondents invoked the foregoing ground at the earliest opportunity, the Court nevertheless finds Article 151 of the Family Code inapplicable to this case. For Article 151 of the Family Code to apply, the suit must be exclusively between or among “members of the same family.” Once a stranger becomes a party to such suit, the earnest effort requirement is no longer a condition precedent before the action can prosper.³⁴ In *Hiyas Savings and Loan Bank, Inc. v. Acuña*,³⁵ the Court explained the rationale behind this rule, to wit:

[T]hese considerations do not, however, weigh enough to make it imperative that such efforts to compromise should be a jurisdictional prerequisite for the maintenance of an action whenever a stranger to the family is a party thereto, whether as a necessary or indispensable one. It is not always that one who is alien to the family would be willing to suffer the inconvenience of, much less relish, the delay and the complications that wranglings between or among relatives more often than not entail. Besides, it is neither practical nor fair that the determination of the rights of a stranger to the family who just happened to have innocently acquired some kind of interest in any right or property disputed among its members should be made to depend on the way the latter would settle their differences among themselves.³⁶

In this relation, Article 150 of the Family Code reads:

Art. 150. Family relations include those:

- (1) Between husband and wife;
- (2) Between parents and children;
- (3) Among other ascendants and descendants; and
- (4) Among brothers and sisters, whether of the full or half-blood.

In this light, case law states that Article 151 of the Family Code must be construed strictly, it being an exception to the general rule. Hence, any person having a collateral familial relation with the plaintiff other than what is enumerated in Article 150 of the Family Code is considered a stranger who, if included in a suit between and among family members, would render unnecessary the earnest efforts requirement under Article 151.³⁷ *Expressio*

³⁴ See *Hiyas Savings and Loan Bank, Inc. v. Acuña*, 532 Phil. 222, 232 (2006).

³⁵ *Id.*

³⁶ *Id.* at 230-231, citing *Magbaleta v. Gonong*, *supra* note 30, at 231.

³⁷ See *Martinez v. Martinez*, *supra* note 30, at 339-340.


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unius est exclusio alterius. The express mention of one person, thing, act, or consequence excludes all others.³⁸


In this instance, it is undisputed that: (a) Jose and Consuelo are full-blooded siblings; and (b) Consuelo is the mother of Rene, Luis, Philippe, and Claudine, which make them nephews and niece of their uncle, Jose. It then follows that Rene, Luis, Philippe, and Claudine are considered “strangers” to Jose insofar as Article 151 of the Family Code is concerned. In this relation, it is apt to clarify that while it was the disagreement between Jose and Consuelo that directly resulted in the filing of the suit, the fact remains that Rene, Luis, Philippe, and Claudine were rightfully impleaded as co-defendants in Jose’s complaint as they are co-owners of the subject lands in dispute. In view of the inclusion of “strangers” to the suit between Jose and Consuelo who are full-blooded siblings, the Court concludes that the suit is beyond the ambit of Article 151 of the Family Code. Perforce, the courts *a quo* gravely erred in dismissing Jose’s complaint due to non-compliance with the earnest effort requirement therein.

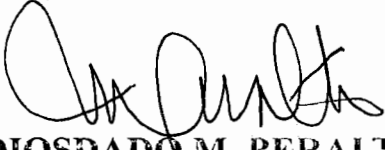
WHEREFORE, the petition is **GRANTED**. The Decision dated September 24, 2014 and the Resolution dated March 17, 2015 of the Court of Appeals in CA-G.R. SP No. 129232 are hereby **REVERSED** and **SET ASIDE**. Accordingly, Civil Case No. 12-004 is **REINSTATED** and **REMANDED** to the Regional Trial Court of Muntinlupa City, Branch 205 for further proceedings.

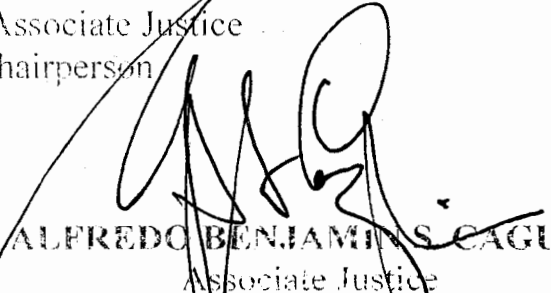
SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Senior Associate Justice
 Chairperson


DIOSDADO M. PERALTA
 Associate Justice

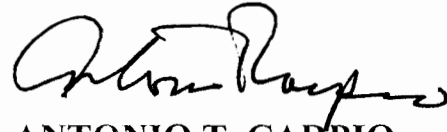

ALFREDO BENJAMINS CAGUIOA
 Associate Justice

³⁸ *Nasipit Integrated Arrastre and Stevedoring Services, Inc. v. Nasipit Employees Labor Union*, 578 Phil. 762, 769 (2008).

Meyer
ANDRES B. REYES, JR.
Associate Justice

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.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, As Amended)