



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

ROWENA C. DE LEON as substituted
 by her children **John Kevin C. De Leon**
 and **Eisenhower Callumba**,
 Petitioners,

G.R. No. 186522

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

- versus -

Promulgated:

LOLITA CHU and **DOMINGO DELOS**
SANTOS,
 Respondents.

02 SEP 2015
Manuel C. Cabalag, Jr.

X-----

DECISION

BRION, J.:

This is a petition for review on *certiorari* filed from the 17 December 2007 Decision and 3 February 2009 Resolution of the Court of Appeals (CA) in **CA-G.R. CV No. 88241**.¹ The assailed Decision and Resolution denied the petitioner's appeal in the consolidated **Civil Case No. 2257** and **LRC Case No. 1322**.

ANTECEDENTS

On 18 November 1999, petitioner Rowena C. De Leon (*Rowena*) filed a petition before the Regional Trial Court (*RTC*) in Gapan against respondent Lolita Chu (*Lolita*). Rowena demanded Lolita's surrender of the Transfer Certificate of Title (*TCT*) No. 228526 covering a 50-square meter parcel of land in San Roque, Cabiao, Nueva Ecija. The case was raffled to Branch 35 and docketed as **LRC Case No. 1322**.

Rowena alleged that before leaving for Saudi Arabia in June 1997, she entrusted the title to Lolita who thereafter refused to return it. Rowena

¹ Both were penned by then CA Associate Justice Estella M. Perlas-Bernabe and concurred in by Associate Justices Lucas P. Bersamin (both now Members of this Court) and Magdangal M. De Leon.

claimed that she bought the property from respondent Domingo Delos Santos (*Domingo*) as evidenced by a Deed of Absolute Sale dated 19 March 1993. However, the same Deed of Absolute Sale also showed that out of the 600-square meter property he then owned, Domingo separately sold the remaining 550 square meters to Lolita.

On 17 May 2000, Lolita and Domingo filed a case against Rowena before the RTC of Gapan for the annulment of the Deed of Sale dated 19 March 1993, and for the cancellation of TCT No. 228526. The case was raffled to Branch 87 and docketed as **Civil Case No. 2257**.

Lolita and Domingo claimed that on 17 December 1990, Domingo sold to Lolita his 600-square meter portion of a parcel of land [Lot G-2-A]. They executed the Deed of Absolute Sale on the same date. Before leaving for Japan on 5 September 1992, Lolita entrusted the document to Rowena. Thereafter, Rowena allegedly forged their signatures in certain documents² to make it appear that Domingo transferred a 50-square meter portion of the land to Rowena. Rowena used the falsified documents to subdivide the portion as Lot No. G-2-A-1-A and to register it in her name under TCT No. 228526.

On 14 July 2000, Lolita filed her answer in LRC Case No. 1322. She denied the accusations and alleged that her and Domingo's signatures in the 19 March 1993 Deed of Sale had been forged.

In her answer in Civil Case No. 2257, Rowena admitted that Domingo executed the deed of sale only in favor of Lolita. However, she claimed: (1) that she had already paid Domingo consideration for the 50-square meter portion; and (2) that the three of them had an internal arrangement not to include her (Rowena) in the deed of sale because the Bureau of Lands had not yet approved the subdivision plan for Domingo's property. She further claimed that she executed the allegedly forged documents upon the advice and consent of Lolita.

On 29 January 2001, Lolita filed a Motion to Suspend the Proceedings in LRC Case No. 1322 due to the pendency of Civil Case No. 2257, which results, she claimed, would determine the disposition of the first case (Case No. 1322).

On 8 August 2001, the RTC denied the Motion to Suspend the Proceedings in LRC Case No. 1322 because that case had been filed ahead of Civil Case No. 2257.

Upon motion of both parties to Civil Case No. 2257, this case was nonetheless consolidated with LRC Case No. 1322 per Order dated 8 February 2002. The consolidated case was assigned to Branch 35.

² *Deed of Absolute Sale* dated 19 March 1993; *Joint Affidavit of Vendor and Vendee* dated 25 March 1993; and *Agreement of Subdivision* dated 30 April 1993.

After trial on the merits, the RTC rendered its decision on 28 August 2006, in favor of Lolita and Domingo, after finding that Rowena had falsified their signatures. The RTC ruling reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs in Civil Case No. 2257 and against the plaintiff in LRC Case No. 1322, declaring the Deed of Sale dated March 19, 1993, and the Agreement of Subdivision dated April 30, 1993, as null and void and of no force and effect and ordering the Register of Deeds of Nueva Ecija to cancel TCT No. NT-228526 in the name of Rowena Amparo C. de Leon. Accordingly, LRC Case No. 1322 is hereby DISMISSED.

Rowena appealed to the Court of Appeals (CA) and raised a lone assignment of error, to wit:

THE HONORABLE COURT A QUO GRAVELY ERRED IN RENDERING A DECISION NOT IN ACCORD WITH EXISTING LAWS AND APPLICABLE JURISPRUDENCE BY DISMISSING L.R. CASE NO. 1322 AND INSTEAD GIVING DUE COURSE TO CIVIL CASE NO. 2257 DESPITE THE FACT THAT APPELLEES ARE GUILTY OF FORUM SHOPPING.³

The CA denied the appeal in its Decision promulgated on 17 December 2007. The CA held that the dismissal of Civil Case No. 2257 was not warranted. The submission of a false certificate of non-forum shopping only constitutes indirect contempt and will not cause the immediate dismissal of the case unless a party deliberately committed forum shopping.

The CA further held that Rowena failed to pursue the proper remedies to resolve the alleged submission of a false certificate of non-forum shopping. Moreover, she also filed a motion to consolidate Civil Case No. 2257 with LRC Case No. 1322, effectively absolving Domingo and Lolita from sanctions for the supposed forum shopping.

Rowena moved for reconsideration, which the CA denied in a Resolution promulgated on 3 February 2009.

Hence, the instant petition for review on *certiorari*.

THE PETITION

Rowena raises the following issues in her Assignment of Errors:⁴

1. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE RESPONDENTS ARE GUILTY OF FORUM SHOPPING.

³ Appellant's Brief, *rollo* p.71.

⁴ *Rollo*, pp. 14-15.

2. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT NO COMPLETE RELIEF CAN BE HAD IN THE INSTANT CASE FOR THE RESPONDENT'S FAILURE TO INCLUDE IN HER COMPLAINT AN INDISPENSABLE PARTY.
3. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DISMISSAL OF LRC CASE NO. 1322 DESPITE THE FACT THAT THE CERTIFICATE OF TITLE IN POSSESSION OF THE RESPONDENT BELONGS TO THE HEREIN PETITIONER.
4. THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT GRAVELY ERRED IN APPLYING THE RULES OF EVIDENCE IN FAVOR OF THE RESPONDENTS.
5. THE COURT OF APPEALS AND THE REGIONAL TRIAL COURT GRAVELY ERRED IN NOT FINDING THE HEREIN PETITIONER AS A BUYER IN GOOD FAITH.

OUR RULING

The petition is without merit.

Rule 7, Section 5 of the Rules of Court prescribes the rule on certificates of non-forum shopping. To wit:

Section 5. Certification against forum shopping. – x x x

Failure to comply with the foregoing requirements shall not be curable by mere amendment or the complaint or other initiatory pleading but shall be **cause for the dismissal** of the case without prejudice, unless otherwise provided, **upon motion and after hearing**. The submission of a **false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court**, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute **willful and deliberate forum shopping**, the same shall be **ground** for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (emphasis supplied)

A violation of the abovementioned rule – other than through willful and deliberate forum shopping – does not authorize the RTC to dismiss a case without motion and hearing.⁵ Even the submission of a false certification of non-forum shopping does not automatically warrant dismissal of the case, even if it might constitute contempt of court. Significantly, the petitioner did not move for the dismissal of the petition in Civil Case No. 2257 or to cite the respondents for indirect contempt. She also failed to show that the respondents committed willful and deliberate

⁵ 638 Phil. 80, 92 (2010).

forum shopping. Instead, she raised the issue of forum shopping and non-compliance with Rule 7, Section 5 only on appeal.

This Court is mindful of the rule that trial courts may dismiss a case *motu proprio* on the ground of *litis pendentia*, among other things. This rule is found in Rule 9, Section 1 of the Rules of Court:

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 pending action 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. (emphasis supplied)

However, the ground for dismissal must be evident from the pleadings or from the evidence on record before a Court can dismiss a case *motu proprio*.

In the present case, the petitioner should have brought the pendency of LRC Case No. 1322 to the attention of the Court in Civil Case No. 2257 to cause the dismissal of the latter case. Instead, she agreed to consolidate the two cases. With the Consolidation of Civil Case No. 2257 and LRC Case No. 1322, there was no longer “*another action between the same parties for the same cause*”; the potential ground for dismissal for *litis pendentia* had been rendered moot. Clearly, the Court of Appeals did not err in denying her appeal.

The second issue is a new issue that was not raised before the RTC or the CA. It is a settled rule that no questions will be entertained on appeal unless it has been raised in the lower court. Points of law, theories, issues, and arguments not brought to the attention of the lower court need not be, and ordinarily will not be considered by a reviewing court, as they cannot be raised for the first time at that late stage.⁶

In any case, the cited failure to implead the Register of Deeds is not fatal to the case. The Register of Deeds is merely a nominal party who does not need to participate in the proceedings to adjudicate the rights of the petitioner and the respondents.

Finally, with respect to the petitioner’s last three issues, we note that they were never raised on review before the CA despite an adverse ruling by the RTC. Hence, the rulings of the trial court on these issues are already final and no cogent reason exists to take them up at this late stage.⁷

⁶ *Maxicare PCIB CIGNA Healthcare v. Contreras*, G.R. No. 194352, 30 January 2013, 689 SCRA 763; *Spouses Dycoco v. Court of Appeals*, G.R. No. 147257, 31 July 2013, 702 SCRA 566; *Tan v. Commission on Elections*, 537 Phil. 510, 533 (2006); *Del Rosario v. Bonga*, 402 Phil. 949 (2001).

⁷ 342 Phil. 383, 386 (1997).

WHEREFORE, the petition is **DENIED** for lack of merit. Costs against the petitioner Rowena De Leon.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

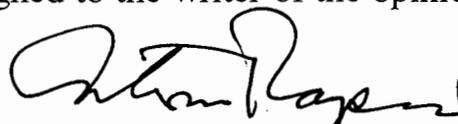

MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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