

ONG TEK SIN, ONG TING SING TAN, AND ROSITA ONG [DE LEON], PETITIONERS, VS. HON. SYLVA G. AGUIRRE PADERANGA, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 16 OF THE REGIONAL TRIAL...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Orders dated 14 July 2010[1] and 18 November 2010[2] rendered by the Regional Trial Court, Branch 16 of Cebu City.

This petition stems from the Special Proceedings of the Intestate Estate of the Deceased Don Filemon Sotto (“The Estate”) in SP. Proc No. 2706-R. One of the properties involved in the proceedings is Lot No. 8625, located in Cebu City, containing an area of six thousand one hundred sixty four (6,164) square meters, more or less, previously covered by OCT No. O-1633.

The Estate of Don Filemon Y. Sotto entered into a legal retainership agreement[3] with Atty. Makilito B. Mahinay (“Atty. Mahinay”) sometime in 1998. The agreement was approved by the court a quo in its Order[4] dated December 22, 2003.

On October 14, 2008, the Estate and Atty. Mahinay executed a Deed of Conveyance[5], transferring a portion of Lot No. 8625, containing an area of two thousand one hundred fifty-seven (2,157) square meters, more or less, to the latter as a reward for the latter's successful efforts in defending and reserving the Estate's ownership over Lot No. 8625. They had already subdivided the lot into two portions, Lot No. 8625-A with an area of 2,157 square meters under TCT No. T-18320, and Lot No. 8625-B with an area of 4,007 square meters under TCT No. T-183821.

On October 17, 2008, the Estate filed a Verified Ex-Parte Motion to Approve Attached Deed of Conveyance[6]. During the hearing of said motion, the court a quo required the estate to submit a copy of the final decision involving the ownership over Lot No. 8625. Thereafter, on December 12, 2008, the Estate submitted the Court of Appeals Decision[7] in CA-GR CV No. 50329 promulgated on November 7, 2002, the Supreme Court's Minute Resolution[8] dated August 27, 2003 which denied the petition for review on certiorari, and the Entry of Judgment[9] dated October 2, 2003.

On January 7, 2009, the court a quo issued an Order[10] granting the Estate's motion and approving the Deed of Conveyance.

On February 2, 2009, petitioners Tan Siok Kun, Ong Tek Sin, Ong Ting Sing Tan, Rosita de Leon filed a Motion for Reconsideration[11] of the Order dated January 7, 2009. Petitioners claimed that the Estate filed an ex-parte motion even when it was aware of their interest, as they had filed a civil case for Specific Performance and Damages[12] against the Heirs of Filemon Sotto docketed as Civil Case No. 23151. At that time of the filing of

the ex-parte motion, the case was pending appeal with this Court and docketed as CA-GR CV No. 02866. The petitioners only came to know about the segregation of Lot No. 8625 during their negotiation for a compromise. Petitioners claim that in their negotiation, the lot allotted to them was Lot No. 8625-B with an area of 4,007 square meters, lesser than their claim in the civil case. They are willing to accept the same and would drop the case filed against the Estate should the latter execute a Deed of Confirmation of Sale.

On February 25, 2009, the court a quo issued an Order[13] denying petitioners' Motion for Reconsideration for lack of merit. The court a quo said that the petitioners did not yet have a clear right over the ownership of Lot No. 8625. As the lot was subdivided already, it is apparent that petitioners' concern is only with respect to Lot No. 8625-B. The Deed of Conveyance only affects Lot No. 8625-A.

On March 27, 2009, the petitioners filed their Notice of Appeal[14] with Record on Appeal[15]. This was opposed by the Estate in their Motion to Dismiss Appeal[16] dated April 8, 2009.

On July 14, 2010, the court a quo issued the assailed Order[17] dismissing the Notice of Appeal. The court a quo agreed with the Estate that the petitioners were not parties in interest; neither are they heirs of the deceased nor creditors under the probate proceedings. The trial court also emphasized that its Orders dated January 7, 2009 and February 25, 2009 were interlocutory orders; and the proper remedy is a petition for certiorari under Rule 65 and not appeal. It also said that the pending appeal of petitioners' complaint in CEB-23151 touches on the issue of ownership over the subject property which is a duplication of their instant appeal and would violate the principle of non-forum shopping and the doctrine of *litis pendencia*. The court a quo ruled thus:

“WHEREFORE, FOR ALL THE FOREGOING CONSIDERATIONS, the instant MOTION TO DISMISS the Notice of Appeal filed by the movants (petitioners herein) is hereby GRANTED.

The Notice of Appeal from the orders of this Court dated January 7, 2009 and February 25, 2009 filed by the movants is hereby DISMISSED, on grounds of *litis pendencia* and forum shopping.

SO ORDERED.”

Dissatisfied with the trial court's Order, petitioners filed a Motion for Reconsideration[18] on August 2, 2010. They claim that they are parties-in-interest as they are successors-in-interest over the subject lot which they had purchased from the declared heirs of Don Filemon. They could also appeal as it is allowed in special proceedings. They also alleged that the deed of conveyance is improper and unethical as a lawyer is prohibited from acquiring the property which is the object under litigation.

On November 18, 2010, the court a quo issued the other assailed Order[19] denying petitioners Motion for Reconsideration. The court stressed that the dismissal was due to *litis pendencia* and forum shopping; hence, the appeal becomes dilatory and frivolous. The dispositive portion states:

“WHEREFORE, the foregoing considered, the herein movants' instant Motion for Reconsideration of this Court's Order dated July 14, 2010 is hereby DENIED, for lack of merit.

SO ORDERED.”

Aggrieved, petitioners filed this instant petition[20] raising the following issues:

I

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING HEREIN PETITIONERS' NOTICE OF APPEAL WITH RECORD OF APPEAL ON THE PRETEXT THAT:

A. HEREIN PETITIONERS ARE NOT PARTIES-IN-INTEREST.

B. THE PROPER REMEDY SHOULD HAVE BEEN A PETITION FOR CERTIORARI UNDER RULE 65, AND NOT RULE 45.

C. THE APPEAL CONSTITUTES (sic) FORUM SHOPPING AND VIOLATES THE DOCTRINE ON LITIS PENDENTIA

D. THE APPEAL IS DILATORY AND FRIVOLOUS

II

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN FAILING AND REFUSING TO RULE A LEGAL AND ETHICAL ISSUE WHICH IS, WHETHER OR NOT THE APPROVED DEED OF CONVEYANCE INVOLVING A PROPERTY IN LITIGATION IN FAVOR OF HANDLING COUNSEL (ATTY. MAKILITO B. MAHINAY OF M.B. MAHINAY & ASSOCIATES) IS IN VIOLATION OF THE LEGAL PROHIBITION UNDER ARTICLE 1491 OF THE NEW CIVIL CODE OF THE PHILIPPINES, MORE PARTICULARLY PARAGRAPH 5 THEREOF.[21]

The Ruling of the Court

Appeals from the Regional Trial Court in the exercise of its original jurisdiction to this Court are governed under Rule 41 of the 1997 Rules of Civil Procedure. Section 13 states when an appeal may be dismissed by the trial court, viz:

Sec. 13. Dismissal of appeal. - Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may motu proprio or on motion dismiss the appeal for having been taken out of time.

Hence, the only ground for dismissal of an appeal from the Regional Trial Court is the failure of an appellant to file the notice of appeal or the record on appeal in the period provided by the rules. The RTC has no power to disallow an appeal on any other ground – that it is frivolous, or the case has become moot, etc. The authority to do so is not with the court a quo whose decision is in issue, but only with the appellate court. Otherwise, the way would be opened for trial courts to forestall review or reversal of their decisions by higher courts, no matter how erroneous or improper such decision should be.[22]

In this case, the court a quo dismissed petitioner's appeal on the grounds that: 1) petitioners are not parties-of-interest; 2) appeal is the wrong remedy as the assailed Order is an interlocutory order; 3) the appeal violates the rules of non-forum shopping and litis pendencia and 4) the appeal is dilatory and frivolous. Clearly, the court a quo exceeded its authority when the Orders dated July 14, 2010 and November 18, 2010, which dismissed the appeal, were issued.

Anent the issue that the court a quo gravely abuse its discretion in approving the Deed of Conveyance executed by the Estate transferring a portion of Lot No. 8625 to Atty. Mahinay, We find that the said Deed violates Article 1491 of the Civil Code.

Article 1491 states, thus:

Article 1491(5) of the Civil Code provides:

1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

...

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

It must be remembered that the civil case for Specific Performance was filed by the petitioners herein on January 4, 1999. The Deed of Conveyance was executed on October 14, 2008, while the appeal was still pending with this Court. Hence, the lot subject of this case was still under litigation when the Deed of Conveyance was approved by the court a quo. As such, the court a quo gravely abused its discretion in approving the Deed of Conveyance.

Notwithstanding the foregoing findings, this petition must still be dismissed for being moot and academic.

As mentioned, petitioners previously filed a complaint[23] for Specific Performance with Damages against private respondents praying that the latter be ordered to execute an extrajudicial settlement with confirmation of sale over portions of Lot No. 8625 in favor of the former and for the latter to accept the former's tender of payment. However, the court a quo dismissed the case pursuant to Rule 17, Section 3[24] of the 1997 Revised Rules of Civil Procedure. Thereafter, petitioners appealed[25] to this Court, but it was dismissed in the Resolution[26] dated March 18, 2011 for failure to file the appeal within the period mandated by law and for procedural flaws in the Verification and Certification of Non-Forum Shopping. Petitioners filed a Motion for Reconsideration, but it was denied in this Court's Resolution[27] dated September 13, 2011. Undaunted, petitioners filed a Petition for Review on Certiorari with the Supreme Court. Unfortunately, the petition was denied in a Minute Resolution[28] dated January 25, 2012. Petitioners filed a Motion for Reconsideration but the Supreme Court denied the motion with finality in the Minute Resolution[29] dated July 9, 2012. On September 25, 2012, the resolution became final and executory and an Entry of Judgment[30] was issued.

From the foregoing, it is clear that petitioners no longer has a claim over the subject lot as the Supreme Court denied their petition with finality. Hence, even if this Court were to nullify and set aside the Orders dated 14 July 2010 and 18 November 2010, it would still have to deny any appeal filed by the petitioners as they no longer have any interest over the subject lot. Otherwise, there would be no end to litigation.

It is a rule of universal application, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.[31]

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED for being moot and academic.

SO ORDERED.

Delos Santos, and Lopez, JJ., concur.

[1] Rollo, pp. 32-34.

[2] Rollo, pp. 43-45.

- [3] Rollo, pp. 96-97 (undated copy).
- [4] Rollo, p. 98 (by Judge Agapito L. Hontanosas, Jr.).
- [5] Rollo, pp. 99-102.
- [6] Rollo, pp. 91-95.
- [7] Rollo, pp. 106-118 (penned by Justice Guariña, concurred by Justices Jacinto and Villarama of the Fourth Division).
- [8] Rollo, pp. 119-120.
- [9] Rollo, pp. 121-122.
- [10] Rollo, pp. 123-124.
- [11] Rollo, pp. 125-127.
- [12] Rollo, pp. 191-200.
- [13] Rollo, pp. 134-136.
- [14] Rollo, pp. 46-47.
- [15] Rollo, pp. 48-51.
- [16] Rollo, pp. 137-141.
- [17] Rollo, pp. 32-34.
- [18] Rollo, pp. 35-42.
- [19] Rollo, pp. 43-45 (Penned by Judge Sylva G. Aguirre Paderanga).
- [20] Rollo, pp. 3-29.
- [21] Rollo, p. 10.
- [22] Ortigas & Co.Ltd. Partnership vs. Judge Velasco, G.R. No. 109645, August 15, 1997.
- [23] Rollo, p..
- [24] Rule 17, 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. (3a).
- [25] Rollo, pp. 221-242.
- [26] Rollo, pp. 245-252 (by the Twentieth Division composed of Justices Delos Santos, Reyes-Carpio (ponente) and Peralta).
- [27] Rollo, pp. 253-255 (by the Special Former Twentieth Division composed of Justices Delos Santos, Garcia-Fernandez and Peralta (ponente)).

[28] Rollo, p. 256.

[29] Attached to CA-G.R. CEB-CV No.02866 Rollo.

[30] Attached to CA-G.R. CEB-CV No.02866 Rollo.

[31] PLDT vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163037, February 6, 2013 citing Gancho-on vs. Secretary of Labor and Employment, 337 Phil. 654 (1997).

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