

**PERPETUA BUHAIN VDA. DE MINTU, ADMINISTRATRIX, ESTATE OF THE LATE EUGENIO MINTU (ORIGINAL DEFENDANT), PETITIONER, VS. HON. COURT OF APPEALS, (SPECIAL DIVISIONS: (A) FORMER THIRD...**

*G.R. No. L-25698. October 23, 1980*

Ponente: FERNANDO, C.J.

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**FERNANDO, C.J.:**

It is a procedural due process question that is raised in this petition for review of a resolution of the Court of Appeals granting a motion for reconsideration and thus setting aside its previous order requiring the Court of First Instance of Manila to conduct anew a sale at public auction of a foreclosed property, with due notice to petitioner Perpetua Buhain Vda. de Mintu, as Administratrix of the estate of the late Eugenio Mintu. The foreclosure sale took place after the judgment had reached the stage of finality, with private respondent as the prevailing party. The basis for the allegation that procedural due process was not observed was that the counsel for petitioner, Attys. Josefina A. Calupitan, Felix B. Mintu and Apolinar S. Fojas, "never filed pleadings nor personally appeared in the appellate courts or even in the trial court after the case was returned to said court for execution. In the Court of Appeals, they did not file a motion for reconsideration of the judgment of January 31, 1964, a step which any sane party or lawyer would logically do, so that, if denied, he could go to this Honorable Court on certiorari." [1] It is their submission that the above facts and circumstances indicated "that petitioner and her co-heirs were totally unaware of the proceedings which took place after the case was certified to the Court of Appeals. All the time they thought that the appealed case was still pending in this Honorable Supreme Court. Why?" [2] The explanation according to them was that the copy of the previous resolution of this Court which certified the appealed case to the Court of Appeals petitioner predecessor-in-interest, the late Eugenio Mintu, having lost the foreclosure suit, was "sent by registered mail to 'Atty. Calupitan' at 713 Aurora Boulevard, Quezon City, but the same was returned to this Honorable Court 'unclaimed.'" [3] Accordingly, there is a reiteration in a later portion of their brief that the decision of the Court of Appeals of January 31, 1964 had "never become final for lack of proof of the sending of the first notice, if any, and because none of the lawyers of petitioner had received an official copy of the said decision of January 31, 1964." [4] On that foundation, far from solid, they would rest their case.

Nor is that the only deficiency as far as petitioner is concerned. As set forth in the counterstatement of facts of respondents: "1. Contrary to the petitioner's allegation, the records of this case undeniably show that during the trial of the case in the Court of First Instance of Manila, a great number of notices for the therein defendant (now petitioner) were sent to Atty. Calupitan or otherwise to Attys. Fojas & Calupitan as defendant's counsel of records at 713 Aurora Boulevard, Quezon City only, and not elsewhere too. This was the case, whether the notices were sent by plaintiff or by the Court. The same was true during the pendency of the case on appeal in the Supreme Court and the Court of Appeal. In fact, in several pleadings of said defendant, and even in the brief filed by her on appeal, she made the names of Attys. Fojas & Calupitan to appear as her counsel with the same office address,

namely, 713 Aurora Boulevard, Quezon City, thereby making the plaintiff and the courts believe that was the address where not only Atty. Calupitan but also Atty. Fojas could be served with notices. Several notices were served on defendant at that address only, without the faintest complaint being heard from her. 2. The petitioner fails to state in her brief that she was effectively notified of the judgment of the Court of Appeals following transmittal thereof to the court for execution, since a copy of the motion for execution of judgment was properly sent to [her] long before the actual sale on execution." [5]

It would appear, therefore, that the Court of Appeals did right in holding that as of the date September 7, 1965 when the reconsidered order was issued, the case had already been terminated. Necessarily reconsideration was the proper remedy. There is no merit to this petition.

It is quite obvious from the very wording of the brief for the petitioner [6] that there was no denial of notices being sent to the attorney of record that categorically made plain in the brief for private respondent. Instead, the plea characterized more by ingenuity than by plausibility was made that petitioner as well as her co-heirs "were totally unaware of the proceedings" [7] which thereafter took place leading them to conclude erroneously that the appealed case was still pending in this Tribunal. By so wording their contention they could sub silentio avoid stating that notices were in fact sent to the counsel of record. That was made clear in the preceding pages in the brief for the respondents. Since notices were in fact sent not only as to the proceedings had but likewise as to the judgment of the Court of Appeals, it is quite apparent that the contention that there was a denial of procedural due process is bereft of support and in law. Under the circumstances, petitioner had only herself to blame for again as pointed out in the brief for the respondents, the notices were sent to the address of the counsel of record. If they were returned unclaimed, that fact should not militate against putting an end to a litigation where the final decision in favor of respondents had been rendered more than a decade ago. At the time the brief for the petitioner was filed, an unbroken line of decisions had made clear that under the circumstances disclosed, the allegation of procedural due process is utterly devoid of merit. [8]

WHEREFORE, this petition for review is dismissed for lack of merit. Costs against petitioner.

Aquino, Guerrero, Abad Santos, and De Castro, JJ., concur.

Barredo, J., took no part.

Concepcion, Jr., J., did not take part. He was a member of the Sixth Division of the Court of Appeals, to which this case was assigned and participated in the decision rendered.

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[1] Brief for the Petitioner, 15.

[2] Ibid., 15-16.

[3] Ibid., 16.

[4] Ibid., 21.

[5] Brief for the Respondents, 1-2.

[6] Cf. Brief, 15.

[7] Ibid.

[8] Cf. *Enriquez v. Bautista*, 79 Phil. 220 (1947); *Martinez v. Martinez*, 90 Phil. 697 (1952); *Ortega v. Pacho*, 98 Phil. 618 (1956); *Wack Wack Golf and Country Club v. Court of Appeals*, 106 Phil. 501 (1959); *Elli v. Ditan*, 115 Phil. 562 (1962) and *Tolentino v. Ongsiako*, 117 Phil. 1017 (1963).

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