

**LAMBERT'S LENDING INVESTORS, INC.,
PLAINTIFF-APPELLEE, VS. JANET BINONGO, EDWIN MORATO,
DEFENDANTS-APPELLANTS,**

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

Before this Court is an Appeal[1] filed by defendants-appellants from the Decision[2] of the Regional Trial Court, Branch 25 of Danao City in a case for Accion Publiciana, damages and attorney's fees.

THE PARTIES

Plaintiff-Appellee Lambert's Lending Investors, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office and business address at No. 268 V. Rama Ave., Cebu City. It is represented by its President, Mr. Lambert Lim.[3]

Defendants-Appellants are all of legal age, Filipino and residents of Tuburan Sur, Danao City, Cebu where they may be served with summons and other processes of this Honorable Court.[4]

THE ANTECEDENTS

On August 17, 2006, plaintiff-appellee filed a complaint[5] against defendants-appellants seeking to evict the latter from a parcel of land covered by Tax Declaration No. 0-0421808 located at Tuburan Sur, Danao City.[6]

For failing to file an Answer, defendants-appellants filed before the Regional Trial Court a Motion to Declare Defendants in Default.[7] A hearing of the motion was set on February 2, 2007.[8] However, neither defendants nor their counsel failed to appear despite notice. Hence, defendants were declared in default.[9]

Defendants-Appellants then filed a Motion to Set Aside the Order of Default.[10] An Opposition thereto was filed by plaintiff-appellee.[11] A Supplemental Motion to Set Aside Order of Default was filed by plaintiff-appellee.[12] Defendants-Appellants then filed a Reply[13] to the Supplemental Motion.

On February 11, 2008, an Order[14] was issued by the Regional Trial Court denying the Motion to Set Aside Order of Default.[15]

From the Order of Default, defendants-appellants filed a Motion for Reconsideration.[16] In response to said Motion, plaintiff-appellee filed its Comment/Opposition[17] and was duly noted by the Lower Court on March 19, 2008.[18]

On April 21, 2008, the Lower Court set the date for reception of evidence on May 7, 2008.[19] A Formal Offer of Exhibits for the Plaintiff[20] was submitted by plaintiff-appellee. No Comment/Opposition was interposed by defendants-appellants. Hence, the Exhibits were admitted into the records of the case.[21]

On July 20, 2011, the Regional Trial Court issued the assailed Decision[22] and ruled as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor plaintiff and against all defendants:

1. Ordering defendants and all persons claiming rights under them to vacate the subject lot and turn over its possession to the plaintiff;
2. Ordering defendants to solidarily and jointly pay plaintiff actual damages in the amount of P23,000.00;
3. Ordering defendants to solidarily and jointly pay plaintiff exemplary damages in the amount of P100,000;
4. Ordering each defendant to pay a reasonable amount of rent for the use of the subject property in the sum of not less than P2,000.00 per month from the time they occupied the lot until they will be ejected;
5. Ordering defendants to pay the plaintiff attorney's fees in the amount of P50,000.00 as acceptance fee plus P3,000.00 per court appearance of its counsel;
6. Ordering defendants to pay plaintiff the amount of not less than P10,000.00 as litigation expenses;
7. Ordering defendants to pay the cost of suit.

SO ORDERED.[23]

From the above Decision, defendants-appellees Janet Binongo and Edwin Morato filed a Notice of Appeal on August 25, 2011.[24]

On November 21, 2011, the Court a quo sent a Notice of Transmittal[25] forwarding the records of the instant case to this Court.

On December 6, 2011, Plaintiff-Appellee filed before the Regional Trial Court a Motion for Partial Execution of Judgment.[26] Plaintiff-Appellee asserts that only two (2) out of the seven (7) defendants filed a Notice of Appeal. Hence, the above decision has long become final and executory insofar as the other defendants are concerned. From the foregoing, plaintiff-appellee prayed that a Writ of Execution be issued against defendants Paulo Prieto, Jocelyn Caangay, Chito Abarquez, Helen Beduya and Juliana Bacang.[27] A copy thereof was furnished to this Court courtesy of the Lower Court.[28]

On August 31, 2012, this Court referred the present case for Mediation. On November 26, 2012, the Mediator reported the failure of defendants-appellants to appear despite notice.[29] On December 5, 2012, the Mediator reported the parties' failure to reach a settlement. Consequently, mediation was terminated and the appellate proceedings resumed.[30]

Plaintiff-Appellee alleges that it is the registered and lawful owner of a parcel of land located at Tuburan Sur, Danao City, Cebu covered by Tax Declaration No. 0-0421808.

Sometime in 1999, Jose Lao approached Lambert Lim seeking to obtain a loan using his property as collateral. The property refers to a parcel of land located at Tuburan Sur, Danao City, identified as Assessor's Lot No. 3966 declared under his name per Tax Declaration No. 0-0420665R.

In consideration of a loan of three hundred fifty thousand pesos (P350,000.00), on June 1, 1999, Lao executed a Real Estate Mortgage on the subject property together with all its improvements in favor of plaintiff-appellee. An annotation thereof was made on Tax Declaration No. 0-0420665R.[31]

Failing to repay the loan on its maturity date, plaintiff-appellee foreclosed the property. A public auction was conducted on February 28, 2011 with the plaintiff-appellee prevailing as the highest bidder. Accordingly, a Certificate of Sale was issued on March 2, 2001. Despite the lapse of the period of redemption, no offer to redeem

was made by plaintiff-appellee, thus, consolidation of ownership took place in 2004.

Thereafter, Lim inspected the property. In the course of his inspection, he found individuals occupying a portion of the property. Asserting plaintiff-appellee's ownership over the property, Lim demanded for the removal of the improvements constructed thereon. However, the occupants refused; claiming that they have purchased the property from Lao.

Plaintiff-Appellee repeatedly demanded for the occupants to vacate the property but to no avail. Thus, on November 3, 2006, plaintiff-appellee sent final demand letters to defendants. With defendants' obstinacy in staying on the property, plaintiff-appellee filed the instant case.[32]

Defendants-Appellants Morato and Binongo for their part submit that prior to the reglementary period to answer the Complaint, they have sought the services of the Public Attorney's Office (PAO). However, they were refused assistance for allegedly being disqualified as party litigants. Thus, explaining their failure to file their Answer.[33] As a consequence thereof, defendants-appellants were declared in default.[34]

Defendants-Appellants then sought legal advice from a law student known in their locality. From the February 11, 2008 Order, defendants, without the assistance of counsel, filed a Motion for Reconsideration. The same was however denied by the Lower Court.[35]

The action of the Lower Court prompted defendants to finally seek the services of a lawyer. Defendants-Appellants then filed a Supplemental Motion for Reconsideration interposing that they are poor and lowly-educated and that they were made to believe that a possible settlement will be reached. Hence, there is no longer a necessity of filing an Answer.[36] Such entreaties however failed to convince the Lower Court.

With the unfavorable ruling, defendants-appellants filed the instant appeal. They posit that in 2004, plaintiff-appellee has been aware of their houses constructed on the subject property.

They allege that, on June 1, 2009, the original owner, Jose Lao, without the consent of his wife, mortgaged the property to plaintiff-appellee.[37]

They reiterate the previous arguments set forth in their earlier motions before the Lower Court and assert the presence of a meritorious defense in their cause. To wit:

- a. That they acquired on October 15, 1999 yet, 120 square meters for Defendant-Appellant Edwin Morato and 138 square meters for Defendant-Appellant Janet Binongo, the acquisition having been made in private instruments xxx
- b. That upon the acquisition of the property in 1999, ...they took immediate physical possession thereof.
- c. That they constructed a house worth P400,000.00 and P500,000.00 respectively, and were then declared under Tax Dec Nos. TD No. 0-421799 for Edwin Morato and TD No. 0-421741 for Janet Binongo xxx
- d. That the plaintiff-appellee acquired the property in question only in 2004 by virtue of a Certificate of Sale in a public auction and Consolidation of Title in the office of the Register of Deeds of Cebu.[38]

Defendants-Appellants argue, the Lower Court gravely erred in declaring them as in default basing mainly on the technical rules, without giving due consideration on the merits of the defense.[39]

They assay, the RTC glaringly erred in its failure to resolve who between the parties was in actual prior physical possession of the property in question. Had they been allowed to show evidence, they could have presented proof of their ownership and occupancy of the property.[40]

Defendants-Appellants acquired their respective properties in December 30, 1999 and took immediate possession

of the property.

Thus, the findings of the RTC that Defendants -Appellants are bound by the mortgage does not affect the issue on prior physical possession.[41]

Finally, they assay, the Lower Court failed to consider the fact that the subject property was originally conjugal in nature. The application of the Real Estate Mortgage was solely applied for by Jose Lao without the marital consent of his wife. If the intention of Lao was to mortgage the whole property in favor of plaintiff-appellee, the consent of his wife Sally Lao should have been secured. Without Sally Lao's consent, she should have been entitled to one-half of the undivided share of the subject property.

From these arguments, defendants-appellants pray for the Decision of the Lower Court to be reversed and to further allow defendants-appellants the opportunity to present their evidence in a full-blown trial before the Regional Trial Court.[42]

Plaintiff-Appellee on the other hand contends, it is apparent that no Answer nor responsive pleading was filed by defendants-appellees even beyond the reglementary period to file the same.[43] Plaintiff-Appellee argues that the declaration of default against defendants-appellants is in line with the rules.

Furthermore, the Motion to Set Aside the Order of Default filed by defendants-appellants is prejudicial to it as an adverse party. The Motion failed to comply with the requirements of notice set by law.[44] Plaintiff-Appellee adds that the Motions are also defective in substance as defendants-appellants failed to show that their failure to answer was due to fraud, accident, mistake, excusable negligence and that they have a meritorious defense.[45]

The belated explanation that the failure to file an Answer was because they were made to believe that a settlement was possible and that they need not file an Answer is too flimsy and not a sufficient justification.[46] The Supplemental Motion likewise did not provide a meritorious defense. The documents in the said Motion dubbed as Agreements to Sale by Installments of Conjugal Property are not notarized and therefore not prima facie evidence of the facts therein stated.[47]

Also, Defendants-Appellants are estopped from claiming that they were not represented by counsel to justify the liberal application of the Rules. Defendants repeatedly invoked that the one who gave them advice is a person with limited legal knowledge and who is non-conversant with the technical rules.[48] Quoting the author Ernesto L. Pineda, they argue, "Before any other court, a party may conduct his litigation personally. But, if he gets someone to aid him, that someone must be an authorized member of the bar. He is bound by the same rules in conducting the trial of his case. He cannot, after judgment, claim he was not properly represented by counsel.[49]

Moreover, the second alleged error imputed by defendants-appellants against the Lower Court is misplaced. Since the parties raised the issue of ownership before the Lower Court, the latter passed upon the issue to determine who among them has the better right to possess the lot in question.

Since the determination of ownership is merely provisional for purposes of determining the issue of possession, defendants-appellants may not collaterally attack the title of plaintiff-appellee in the same action. Rather, they may file a separate action for the said purpose.[50]

Finally, plaintiff-appellee asserts, the contention that the questioned property is conjugal holds no water. Defendants-Appellants failed to show and prove that the property belongs to the conjugal properties of the Spouses Lao.

Thus, plaintiff-appellee prays that the instant appeal filed be denied and that the Decision of the Lower Court be affirmed.[51]

ISSUE

The issue for this Court's Resolution is

Whether or not the Regional Trial Court erred in issuing the assailed Decision;

THE COURT'S RULING

At the outset, this Court notes that the other defendants in the original action no longer filed a Notice of Appeal from the July 20, 2011 Decision. In the instant proceedings, only defendants Edwin Morato and Janet Binongo filed their appeal. Hence, the assailed decision has become final and executory with respect to defendants Paulo Prieto, Jocelyn Caangay, Chito Abarquez, Helen Beduya, and Juliana Bacang.

We now discuss the errors raised by defendants-appellants.

An accion publiciana, also known as accion plenaria de posesion,[52] is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title.[53] The objective of the plaintiff in an accion publiciana is to recover possession only, not ownership.[54] However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[55]

It is only in cases where the possession cannot be resolved without resolving the issue of ownership may the trial court delve into the claim of ownership.[56]

In the case at bar, defendants-appellants claim a superior right to possession of the subject property by virtue of its ownership. Plaintiff-Appellee, too claims a better right to possession likewise asserting ownership of the property.

Plaintiff-Appellee invoke its right to possession of the property by virtue of the annotation of the Real Estate Mortgage on Tax Declaration No. 0-0420665R.[57] It also presented a Certificate of Sale[58] issued by the Branch 25 of the Regional Trial Court of Danao City attesting to the foreclosure of the property in its favor and the fact of Jose Lao's non-redemption thereof.

On the other hand, on record are documents appended by defendants-appellants in their Supplemental Motion to Set Aside Order of Default. The unnotarized documents, dubbed as "Agreement to Sale by Installments of Conjugal Property[59]" depicts defendants-appellants as buyers of a parcel of land in the name of Jose D. Lao, under Assessor's Lot No. 3966 located at Tuburan Sur, Danao City, Cebu. They also rely on the fact that they are in current possession of the subject property and were respectively issued Certificates of Occupancy by the Office of the Building Official. They submit, these evidence in the acquisition of property in 1999 and the construction of their houses on their respective lots ought to have been appreciated by the Court and extended liberality and consideration.[60]

In the present case, since both raise the issue of ownership, resolution of these conflicting claims will depend on the weight of the parties' respective evidence.

Before We sift through the parties' weight of evidence, We first resolve defendants-appellants' bid to set aside the Order declaring them in default.

One declared in default has the following remedies:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath

to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).[61]

In the case at bar, defendants-appellants made use of the first remedy. It however remained unreversed on account of defendants-appellants' failure to abide by the requirements of notice. Such fact notwithstanding, defendants-appellants come to this Court praying that they be given an opportunity to present evidence insisting on its merits.

We are unpersuaded. As pointed out by plaintiff-appellant, the motion is defective in form in contravention with Sections 4 and 5, Rule 15[62] of the Rules of Court. Taking into account the circumstances, defendants-appellants motion to set aside the order of default failed to comply with the basic requirements of notice of hearing which must be addressed to all parties concerned. It also did not specify the time and date of hearing which must not be later than ten (10) days after the filing of the motion. Further, it does not appear that the motion was filed within the required three (3) day period within which to do so. All these considerations lead us to affirm the Decision of the Lower Court.

Neither does it appear that defendants-appellants' associate their failure to file an Answer or any responsive pleading to fraud, accident, mistake, or excusable negligence. Defendants-Appellants merely alleged that they were made to believe that that there was no need to file an Answer.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed[63].

Defendants-Appellants invoke their low educational stature in failing to observe the established procedural process. Admittedly though, they received and adopted legal counsel from one whom they distinctly knew to be one who is not authorized nor qualified to dispense one. In doing so, defendants-appellants gambled on the success of their action by relying on someone who they aptly described as a "pseudo-legal expert".[64] Hence, they must bear the consequences of the risk they have taken.

We are also in accord with the observation of plaintiff-appellee in saying that the claim that defendants-appellants were refused the assistance by the Public Attorney's Office is self-serving. This asseveration remains uncorroborated by any evidence on record. Thus, We find no reason to lift the order of default.

Assuming arguendo, We take into account the evidence attached by defendants-appellants, their right to possession remains inferior to that of plaintiff-appellee's.

Since, both parties raised the issue of ownership, a provisional ruling on the ownership of the subject property is in order to determine the right to possession.

Upon examination of the weight of evidence of the parties, We took note that both parties lack possession of a Torrens Title to attest their claimed ownership of the subject property. Rather, both hold only a Tax Declaration to

support their claim to the property. However, unlike defendants-appellants who hold private documents pertinent to the sale of the subject property, plaintiff-appellee has produced a Tax Declaration with an annotation of its interest in the subject property. We also consider that no less than the Regional Trial Court has attested to the fact of non-redemption of the property by Jose Lao.

The rule is well established that before private documents may be admitted in evidence as proof, their due execution and delivery must be proved.[65]

As opposed to the evidence presented by plaintiff-appellee, defendants-appellants' documents lack the presumption of its due execution and authenticity. Hence, even if this Court considers defendants-appellants' attachments, the weight of evidence still tilts in favor of plaintiff-appellee.

Having duly proven by preponderance of evidence their ownership of the subject property, We agree with the conclusion of the RTC declaring plaintiff-appellee entitled to the physical possession of the property.

Finally, the countervailing argument of defendants-appellants anchored on the conjugal nature of the property contested may not be considered in the present case. It must be stressed that the pronouncement of the Court in reference to the ownership of the property is merely provisional and only for the purpose of determining who has better right of possession. Hence, assailing the validity of the Real Estate Mortgage between plaintiff-appellee and Jose Lao must be filed in a separate action for the said purpose.

WHEREFORE, the Appeal is hereby DENIED. The Decision of the Regional Trial Court, Branch 25 of Danao City in Civil Case No. DNA-853 dated July 20, 2011 is AFFIRMED.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Rollo, page 42.

[2] Ibid. page 52.

[3] Original Records, page 2.

[4] Id.

[5] Id.

[6] Id., page 52.

[7] Original Records, page 22.

[8] Original Records, page 24.

[9] Original Records, page 30.

[10] Original Records, page 33.

[11] Original Records, page 40.

[12] Original Records, page 57.

[13] Original Records, page 64.

[14] Original Records, page 70.

- [15] Original Records, page 72.
- [16] Original Records, page 73.
- [17] Original Records, page 89.
- [18] Original Records, page 92.
- [19] Original Records, page 94.
- [20] Original Records, page 96.
- [21] Original Records, page 108.
- [22] Original Records, page 109.
- [23] Id., pages 56-57.
- [24] Original Records, page 116.
- [25] Id., page 11.
- [26] Id., page 15.
- [27] Id., page 16.
- [28] Id., page 11.
- [29] Id., page 34.
- [30] Id., page 35.
- [31] Id., page 67.
- [32] Id., page 68.
- [33] Id., page 42.
- [34] Original Records, page 30.
- [35] Original Records, page 88.
- [36] Id., page 44.
- [37] Id., page 43.
- [38] Id., page 44.
- [39] Id., page 46.
- [40] Id., page 47.
- [41] Id., page 48.
- [42] Id., page 49.
- [43] Id., page 72.
- [44] Id., page 74.
- [45] Id., page 76.

[46] Id., page 77.

[47] Id., page 78.

[48] Id., page 79.

[49] Id., page 80.

[50] Id., page 82.

[51] Id., page 84.

[52] Barredo v. Santiago, 102 Phil. 127, 130 (1957).

[53] Bishop of Cebu v. Mangaron, 6 Phil. 286, 291 (1906); Ledesma v. Marcos, 9 Phil. 618, 620 (1908).

[54] Natalia Realty, Inc. v. Court of Appeals, 440 Phil. 1, 25 (2002).

[55] Urieta Vda. de Aguilar v. Alfaro, G.R. No. 164402, July 5, 2010, 623 SCRA 130, 143.

[56] Spouses Jonel Padilla vs. Isauro A. Velasco, G.R. No. 169956, January 19, 2009.

[57] Original Records, page 99.

[58] Original Records, page 105.

[59] Original Records, pages 57-60.

[60] Id., pages 46-47.

[61] Cerezo v. Tuazon, G.R. No. 141538, March 23, 2004, 426 SCRA 167, 180.

[62] Section 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

[63] Lazaro v. Court of Appeals, 386 Phil 412, 417 (2000), citing Galang v. CA, G.R. No. 76221, July 29, 1991, 199 SCRA 683.

[64] Id., page 46.

[65] Sec. 321, Act No. 190., Jose Antillo vs. Leoncio Barcelon, G.R. No. L-12483, November 16, 1917.

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