

**SPOUSES DEMETRIO VIERNES AND ROSARIO P. VIERNES,
REPRESENTED BY: RICHARD P. VIERNES, PETITIONERS, VS.
REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 96, NOW
PRESIDED BY THE HON AFA...**

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

The Court DISMISSES the petitioners' Petition For Annulment of Judgment.[1]

Under Rule 47, Sections 1 and 2[2] of the Rules of Court, and pursuant to the ruling in *Dare Adventure farm Corp. v. Court of Appeals*,[3] the remedy of annulment of judgments, final orders, or resolutions provided in Rule 47 is available and is limited to where the following circumstances are present: 1) the remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies, are no longer available, through no fault of petitioner; and 2) there is either extrinsic fraud or lack of jurisdiction.

It appears from the allegations in the Petition, that not both of the circumstances or limitations set forth by law, are present here.

The first requisite is absent. The remedies of new trial and appeal are no longer available through no fault of petitioners. However, while the remedy of petition for relief is no longer available, it was lost through the fault of petitioners.

The remedy of a new trial is available under Rule 37 of the Rules of Court. It should be filed within the period for taking an appeal (or 15 days from notice of judgment) as provided in Rule 37, Section 1.[4] This remedy was lost through no fault of petitioners.

The remedy of an appeal is available under Rule 41 of the Rules of Court. It should be filed within 15 days from notice of the judgment, as provided in Rule 41, Section 3.[5] This remedy was lost through no fault of petitioners.

The remedy of a petition for relief from judgment is available under Rule 38 of the Rules of Court. It should be filed 60 days from the time petitioner learned of the judgment, and not more than 6 months after judgment was entered, as provided in Rule 38, Section 3.[6]

From the allegations in the Petition it appears that the petitioners had no knowledge, nor did they participate in the proceedings before the RTC, and only gained knowledge of such proceedings on 16 November 2013 when they received a copy of the Certificate of Finality. Clearly, under Rule 38 Section 3, the petitioners could have filed a petition for relief from judgment, within 60 days from 16 November 2013, or until 15 January 2014, and not more than 6 months after the judgment was entered. However they did not file a petition for relief from judgment. After the expiration of the period to file a petition for relief from judgment, they filed this Petition under Rule 47, only on 23 January 2014. Thus the remedy of filing a petition for relief from judgment was lost, upon the petitioners' fault.

The first limitation or circumstance being absent, it is clear that the remedy in Rule 47 is not available, hence the Petition should be dismissed. It is not necessary to discuss the presence or absence of the second limitation.

IT IS SO ORDERED.

Veloso (Chairperson) and Lantion, JJ., concur.

[1] CA Rollo, p.3.

[2] Rule 47, Section 1. Coverage. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Section 2. Grounds for annulment. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

[3] G.R. No. 161122, 24 September 2012.

[4]

Rule 37

NEW TRIAL OR RECONSIDERATION

SECTION 1. Grounds of and period for filing motion for new trial or reconsideration. - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

[5]

Rule 41

APPEAL FROM THE REGIONAL TRIAL COURTS

x x x

SEC. 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, on appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from. (A.M. No. 01-1-03-SC, 19 June 2001.)

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for

extension of time to file a motion for new trial or reconsideration shall be allowed.

[6]

Rule 38

RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS

x x x

SEC. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgments or final order was entered, or subh proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

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