

SPOUSES ARNOLD TAMONDONG AND WILMA TAMONDONG, PETITIONERS, VS. REGIONAL TRIAL COURT, BRANCH 91, STA. CRUZ LAGUNA PRESIDED BY JUDGE DIVINA GRACIA ONGKEKO, SPOUSES ALFONSO DIMAANO...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Annulment of Judgment[1] filed by petitioners Spouses Arnold and Wilma Tamondong (“petitioners”) seeking to annul the August 28, 2013 Decision[2] of Branch 91 of the Regional Trial Court of the Fourth (4[th]) Judicial Region situated in Sta Cruz, Laguna (“trial court”) in Civil Case No. SC-5226 ordering herein petitioners to pay Spouses Alfonso and Beatriz Dimaano the amount of Seven Hundred Forty-Eight Thousand Twenty Five Pesos (P748,025.00) and attorney's fees.

The material and relevant facts of the case, as culled from the records, are as follows:

Private respondents Spouses Alfonso and Beatriz Dimaano (“private respondents”) filed a Complaint[3] in the trial court for rescission of contract, collection of sum of money and damages against the petitioners. In the said complaint, the private respondents alleged that they entered into an agreement with herein petitioners for the organization, setting-up and operation of a partnership business. The private respondents, however, lamented that the petitioners violated the terms of their Partnership Agreement[4] when the latter, instead, registered a sole proprietorship and not a partnership business, using the money of the partnership. Consequently, the private respondents prayed for the cancellation of the partnership agreement and for the trial court to order the petitioners to return the full amount of their investment.

On May 23, 2012, summons was attempted to be served upon the petitioners at the aforesaid address at No. 20 Papua St., cor. Mindanao Ave., Ext., Bagbag, Quezon City. However, the summons was returned unserved as per the Sheriff's Return dated May 23, 2012 where the process server stated therein that:

“x x x the undersigned exerted time and effort to locate the defendants Sps. Arnold P. Tamondong and Wilma S. Tamondong at Audi Marketing, No. 20, Papua Street, Cor. Mindanao Ave., Brgy. Talipapa, Quezon City but failed on the ground that the defendants were no longer connected with Audi Marketing, the defendants are now residing in abroad, somewhere in Singapore.

“In effect a certification was issued by the Brgy. Talipapa, Quezon City to attest the veracity of my report.

“The summons is hereby respectfully returned UNSERVED[5].”

On July 9, 2012, the private respondents filed their Ex-Parte Motion for Leave of Court[6] to cause the service of summons by publication. On July 27, 2012, the Court a quo issued an Order[7] which granted the private respondents' motion. The copy of the complaint and summons were published in a newspaper of general circulation called “Hataw”[8]. Thereafter, the private respondents filed an ex-parte motion to declare the defendants in default and to take the deposition of the plaintiffs spouses. Consequently, the RTC granted the

motion of the private respondents and allowed them to present their evidence ex parte.

On August 28, 2013, the court a quo rendered a Decision in favor of the private respondents the dispositive portion of which reads:

“WHEREFORE, the court finds merit to the complaint of the plaintiffs Alfonso B. Dimaano, Jr. and Beatriz P. Dimaano against the defendants Sps. Arnold and Wilma Tamondong. The defendants are hereby ordered to pay the plaintiffs in the amount of Seven Hundred Forty-Eight Thousand, Twenty Five Pesos (P748,025.00), attorney’s fees in the amount of P35,000 and costs of suit.

“SO ORDERED[9].”

On April 21, 2014, the private respondents filed an ex-parte motion for the issuance of writ of execution[10] which the trial court granted on May 28, 2014. On May 29, 2014, the trial court issued a Writ of Execution[11] in favor of the private respondents.

In the meantime, the petitioners averred that they were not aware of the civil case that was filed against them in the trial court. Thus, upon their discovery of the decision of the court a quo, the petitioners filed the instant petition for the annulment of the August 28, 2013 decision of the trial court on the ground of extrinsic fraud and lack of jurisdiction.

In the instant petition, the petitioners averred that they could no longer avail of the remedies such as new trial, petition for relief from judgment or reconsideration, as they have only learned of the judgment that was rendered against them on September 25, 2014.

Moreover, the petitioners alleged that the decision of the trial court was void in view of extrinsic fraud that was committed by the private respondents. According to the petitioners, the private respondents were well aware that they were residing at No. 97, P. Jacinto, Grace Park, Caloocan City and, yet, they still stated another address in Quezon City which was not the address of the petitioners. As a result of such misrepresentation by the private respondents, summons was thus served at the wrong address which, thereafter, prevented them from participating in the proceedings in the case.

Further, the petitioners also contended that the court a quo did not acquire jurisdiction over their persons. Considering the false allegation of the private respondents as to their whereabouts, service of summons by publication was improperly made.

In fine, the primordial issue to be resolved by us in the instant petition is whether or not the assailed decision of the court a quo may be annulled on the ground of extrinsic fraud and lack of jurisdiction.

After a careful analysis of the record of the case, together with the applicable law and jurisprudence in the premises, we find that the petition filed in this case is not meritorious.

Prefatorily, Rule 47 of the Revised Rules of Court governs the manner by which a petition for annulment of judgment may be availed of. In particular, Sections 1, 2 and 3 of the said rule provide as follows:

“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 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.

“Section 3. Period for filing action. - If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.”

Under the Rule, an action for annulment of judgment may only be availed of on the following grounds: (1) extrinsic fraud and (2) lack of jurisdiction. A petition for annulment of judgment is an extraordinary action. By virtue of its exceptional character, the action is restricted exclusively to the grounds specified in the rules[12].

In the instant case, the petition was filed by the petitioners on the grounds of extrinsic fraud and lack of jurisdiction of the trial court. Petitioners in this case alleged that fraud and deception were employed upon them by the private respondents in order to deprive them of their opportunity to present their case in court.

Based on the afore-cited Rule, one important condition for the availment of this remedy is for the petitioner to show that he or she had failed to move for a new trial in, or appeal from, or file a petition for relief against, or take other appropriate remedies assailing the questioned judgment or final order or resolution of the trial court through no fault attributable to him. If he or she failed to avail of these other remedies without sufficient justification, he or she could not resort to the action for annulment provided in this Rule, otherwise he or she would benefit from his own inaction or negligence[13].

As applied in the instant case, the petitioners had clearly failed to avail of the other remedies provided to him by law to assail the questioned decision and order of the respondent judge. The petitioners could have filed a motion to quash the writ of execution or they could have filed a petition for relief from judgment in the trial court. However, the petitioners failed to avail of the aforesaid remedies. The record is also bereft of any sufficient justification why the petitioners failed to avail of other available remedies before resorting to the present petition. In the case of *Republic v. Spouses De Castro*[14], the Supreme Court held:

“Upon notice of the writ of execution on, by respondents’ own information, September 29, 2005, respondents – if indeed they were completely unaware of the trial court’s decision – had available remedies to question it. They could have promptly filed a motion to quash the writ of execution or, in the alternative, a petition for relief from judgment under Rule 38 of the 1987 Rules of Civil Procedure. That they had ample opportunity to do so is gathered from the fact that the writ of execution of the decision was not immediately implemented by the sheriff as it was satisfied only on July 20, 2006. Having failed to avail of any of the aforesaid remedies without any justification, respondents are barred from resorting to the action for annulment of judgment under Rule 47; otherwise, they would benefit from their own inaction or negligence. So *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*, teaches:

‘Let it be stressed at the outset that before a party can avail of the reliefs provided for by Rule 47, i.e., annulment of judgments, final orders, and resolutions, it is a condition sine qua non that one must have failed to move for new trial in, or appeal from, or file a petition for relief against said issuances or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail of those cited remedies without sufficient justification, he cannot resort to the action for annulment provided in Rule 47, for otherwise he would benefit from his own inaction or negligence (*Republic v. Sandiganbayan*, G.R. No. 140615, Feb. 19, 2001, 352 SCRA 235, 250).

‘In the instant case, not only did petitioner fail to avail of the ordinary and appropriate remedies in assailing the questioned judgments of the trial court, but he also failed to show to the satisfaction of this Court that he could not have availed of the ordinary and appropriate remedies under the Rules. According to petitioner, he allegedly learned of the cases filed against him by respondent bank only when the writs of execution were issued against him. At the very least then, he could have moved to quash the writs of execution. In the alternative, he could have filed a petition for relief from judgment under Rule 38. Instead, petitioner merely alleged that he approached Atty. Gregorio Salazar, the bank’s counsel, for clarification and assistance, which is not one of the ordinary and appropriate remedies contemplated by the Rules. Petitioner’s failure to explain why he failed to avail of said remedies, which were still available to him at that time, in both Civil Case No.

7355-M and Civil Case No. 2856-V-88, is fatal to his cause. To be sure, a petition for annulment of judgment under Rule 47 is not a substitute for one's own neglect in not availing of the ordinary and appropriate remedies, but a peculiar remedy granted under certain conditions to those who failed to avail of the ordinary remedies without their fault. Thus, in our considered view, based on the cited reasons and circumstances, the Court of Appeals did not err when it denied the petition for annulment of judgment'."

The petitioners had likewise failed to state the material dates in the instant petition, including the date of the finality of the decision of the court a quo, which would show that they could no longer avail of the other remedies and would justify the filing of this petition under Section 3 of Rule 47 of the 1997 Rules of Civil Procedure. It must be noted that annulment of judgment, final orders and resolutions under Rule 47 of the 1997 Revised Rules of Civil Procedure is a last remedy, hence, it cannot be resorted to if the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are still available, or are not available anymore through no fault of the petitioners[15].

Moreover, the petitioners alleged that extrinsic fraud was employed upon them by the private respondents which deprived them of their opportunity to present their case in the court. We do not agree.

Settled is the rule that extrinsic fraud is the kind of fraud which prevented an aggrieved party from presenting his or her case to the court[16]. Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court[17].

The petitioners pointed out that the private respondents stated in their complaint a business address in Quezon City instead of the petitioners' actual residential address in Caloocan City. Because of this, the summons was served at the wrong address. However, the petitioners have not proven this particular allegation by clear and convincing evidence. Thus, this Court could not give credence to this claim by the petitioners.

At this point, it should be stressed that fraud cannot be presumed, and the failure of petitioner to prove it defeats its own cause. The party alleging fraud or mistake in a transaction bears the burden of proof. The circumstances evidencing fraud are as varied as the people who perpetrate it in each case. It may assume different shapes and forms; it may be committed in as many different ways. Thus, the law requires that fraud be established, not just by preponderance of evidence, but by clear and convincing evidence[18]. In this case, however, the petitioners had failed to establish and prove the existence of fraud that would warrant the setting aside of the August 28, 2013 decision of the court a quo. Thus, the aforesaid decision still stands.

Then regarding the petitioner's claim that the court a quo did not acquire jurisdiction of their persons, such a claim is not tenable. The fact is that the lower court allowed the private respondents to serve summons upon the petitioners by publication and such service by publication was duly done.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case.

SO ORDERED.

Ybañez, and Paredes, JJ., concur.

[1] Rollo, pages 3 – 14.

[2] Rollo, Annex "A", pages 15 – 19.

- [3] Rollo, Annex “I”, pages 39 – 45.
- [4] Rollo, Annex “C”, pages 20 – 24.
- [5] Ibid, page 39.
- [6] Rollo, Annex “F”, pages 30 – 31.
- [7] Rollo, Annex “G”, page 32.
- [8] Rollo, page 16.
- [9] Rollo, page 17.
- [10] Rollo, page 18.
- [11] Rollo, Annex “B”, page 18 – 19.
- [12] Republic v. “G” Holdings, Inc., G.R. 141241, November 22, 2005.
- [13] Regalado, Remedial Law Compendium, Vol. I, p. 568, Eight Revised Edition.
- [14] G.R. 189724, February 7, 2011.
- [15] Feria/Noche, Civil Procedure Annotated, Vol. II, p. 219, 2001 Edition.
- [16] Magno vs. Court of Appeals, et. al., G.R. No. L-28486, September 10, 1981
- [17] Bulawan v.v Aquende, G.R. 182819, June 22, 2011.
- [18] Republic vs. Guerrero, G.R. 133168, March 28, 2006

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