

## GILBERTO MAGTUBA AND HELEN MAGTUBA, PETITIONERS, VS. RICARDO GOLEZ, RESPONDENT.

Ponente: FRANCISCO, J.

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### FRANCISCO, J.:

Assailed in this Petition for Review[1] under Rule 42 of the Revised Rules of Court is the Decision,[2] dated 15 November 2010, rendered by the Regional Trial Court, 9[th] Judicial Region, Branch 23 of Molave, Zamboanga del Sur (RTC) in a case docketed as Civil Case No. 2010-20-452 for recovery of possession, damages, and preliminary injunction. In its Decision, the RTC affirmed the Decision,[3] dated 12 November 2009, of the Municipal Trial Court of Molave, Zamboanga del Sur (MTC) in Civil Case No. 820 which declared herein respondent, Ricardo Golez, to be the lawful owner of the parcel of land subject of this case.

#### The Antecedents

On 22 February 2008, the respondent filed a Complaint[4] for Recovery of Possession, Damages, and Preliminary Injunction against petitioner Gilberto Magtuba before the Municipal Trial Court of Molave, Zamboanga del Sur.

The complaint involves a parcel of land identified as Lot No. 7699, now covered under TCT No. T-50,359[5] in the name of the respondent, located in the Barrio of Madasigon, Municipality of Molave, Province of Zamboanga del Sur and containing an area of 386 square meters more or less.

In his Complaint, the respondent alleged that he acquired the subject parcel of land from a certain Benjamin Remedios by virtue of a Deed of Absolute Sale[6] dated 10 September 2007.[7] After acquiring the said property, the respondent then succeeded in having the land titled in his name.[8] However, the respondent was prevented from conducting a survey on the subject land by petitioner Gilberto Magtuba.[9] Gilberto Magtuba also refused to remove the bamboo fences and fighting cocks he had placed on the said property.[10]

Petitioner Gilberto Magtuba filed his Answer[11] on 17 March 2008 alleging that he, along with his parents, brothers and sisters, had been in continuous, actual, open, adverse possession of the subject parcel of land in the concept of owner for more than 30 years.[12] The petitioner also alleged that his sister, Helen Magtuba, purchased the subject land from Gregorio Remedios, the brother of Benjamin Remedios, by virtue of a Deed of Absolute Sale on 1 June 2006.[13] Gregorio Remedios allegedly bought the subject lot from Benjamin Remedios by virtue of a Deed of Absolute Sale on 10 March 2005.[14] Petitioner Gilberto Magtuba thus claims that the respondent was a buyer in bad faith.[15]

The respondent then filed an Amended Complaint[16] impleading herein petitioner Helen Magtuba. The Amended Complaint also alleges that the Deed of Absolute Sale executed on 10 March 2005 between Benjamin Remedios and Gregorio Remedios is fictitious.[17]

After petitioner Gilberto Magtuba filed his Answer to the Amended Complaint,18 the MTC set the case for preliminary and pre-trial conference.

Thereafter, the MTC allowed service of summons by publication upon petitioner Helen Magtuba.

On 13 February 2009, the MTC issued an Order<sup>19</sup> declaring petitioner Helen Magtuba in default for failure to file her responsive pleading.

On 23 March 2009, only the respondent and his counsel appeared for the scheduled pre-trial conference. Thus, the MTC issued an Order<sup>[20]</sup> resetting the pre-trial to 17 April 2009. In the same Order, the MTC directed petitioner Gilberto Magtuba to secure the services of another lawyer, otherwise he will be declared as in default for failure to appear during the pre-trial of the case.

On 17 April 2009, neither petitioner Gilbert Magtuba or his counsel appeared for the pre-trial conference. Accordingly, the MTC issued an Order terminating the pre-trial and allowing herein respondent to present his evidence ex-parte.

Subsequently, the respondent presented the following testimonial and documentary evidence as summarized by the MTC:

Testimonial:

- Benjamin Remedios – he testified that he is the previous owner of Lot 7699 situated at Molave, Zamboanga del Sur which was sold to Ricardo Golez, the owner and to prove the Deed of Sale that was allegedly executed by him in favor of his brother Gregorio Remedios is fictitious; that he is not the owner who signed the Deed of Sale; that the possession of the defendant was merely tolerated by him and he (defendant) has also knowledge that Benjamin Remedios is the owner.

- Ricardo Golez – he testified that he is the present owner of the subject lot having bought the same from Benjamin Remedios. That the title of the lot was already transferred in his name. That defendant Gil Magtuba prevented him from entering the subject lot and when summoned in the barangay, no amicable settlement was reached. That in view of the claim of Gilberto Magtuba that Helen Magtuba is the owner of the lot, the latter was impleaded as defendant, and since her whereabouts is unknown, summons were served upon her by publications. He further testified on his claims for damages and attorneys fees.

Documentary :

- That Exhibit “A” and its sub-markings, which is the Deed of Absolute Sale between Benjamin Remedios, the previous owner and the plaintiff, to prove that Lot 7699 was legally purchased by the plaintiff from the original owner thereof;

- That Exhibit “B” and its sub-markings, is the Certificate true copy of Original Certificate of Title No. 0-6,406, to prove that Lot 7699 was registered in the name of Benjamin Remedios;

- That Exhibit “C” and its sub-markings, is the Certified True Copy of Transfer Certificate of Title No. T-50,359 to prove that the plaintiff succeeded in having Lot 7699 titled in his name;

- That Exhibit “D” and its sub-markings, is Declaration of Real Property Value (Original), to prove that the plaintiff has been religiously paying the real property tax over Lot 7699;

- That Exhibit “E” and its sub-markings, is the Certificate to File Action issued by the Chairman of Barangay Madasigon, Molave, Zamboanga del Sur to prove the fact that the plaintiff complied with the requirement of prior referral to the barangay level since the parties are residents of the same barangay but no settlement was reached between them;

- That Exhibit “F” and its sub-markings, (photocopy only since the original is in possession of the defendant) is the Fictitious Deed of Absolute Sale to prove the fact that Benjamin Remedios was not the one who signed the said document and that the signature appearing on such document is not his own;
- That Exhibit “G” and its sub-markings (Original already submitted to Court) is the Affidavit of Publication issued by the newspaper publisher to prove the fact that the plaintiff complied with the order regarding the publication of the summons of the court as well as the Amended Complaint;
- That Exhibit “H” and its sub-markings (already submitted in Court) is the first Publication of the above-mentioned summons and Amended Complaint to prove the compliance of the order of the court;
- That Exhibit “I” and its sub-markings (already submitted in Court) is the Second Publication of the above-mentioned summons and Amended Complaint to prove the compliance of the order of the court;
- That Exhibit “J” and its sub-markings (already submitted in Court) is the Third Publication of the above-mentioned summons and Amended Complaint to prove the compliance of the order of the court;
- That Exhibit “K” and its sub-markings (Original) is the Official Receipt issued by Pagadian City Star to prove the expenses incurred by the plaintiff in the publication of the summons and the Amended Complaint;
- That Exhibit “L” and its sub-markings (Original already submitted in [C]ourt) are the Official Receipt issued by the Clerk of Court to prove the expenses incurred by the plaintiff in the filing of this case.[21]

On 12 November 2009, the MTC rendered its decision in favor of the respondent. The dispositive portion of the MTC decision reads:

WHEREFORE, after considering all the evidences presented by the plaintiff, judgment is hereby rendered as follows:

- Declaring the Plaintiff to be the lawful owner of the subject lot; and
- Ordering the defendants and all other persons acting in their behalf, to vacate the subject lot and to turn over possession of the same to the plaintiff.

SO ORDERED.[22]

Petitioner Gilberto Magtuba filed a Motion for Reconsideration[23] but the same was denied by the MTC in an Order[24] dated 1 February 2010.

Petitioner Gilberto Magtuba then filed a Notice of Appeal from the MTC Decision. However, the MTC denied the notice of appeal for having been filed beyond the fifteen (15) day reglementary period. Then, on 7 April 2010, the MTC issued an Entry of Judgment declaring that its decision became final and executory on 23 February 2010. A Writ of Execution, dated 23 April 2010, was then issued in favor of the respondent.

On 31 May 2010, the petitioners' new counsel, Atty. Manileño Apiag, filed his entry of appearance before the MTC. In the same pleading, the petitioners moved for the reconsideration of the 25 February 2010 Order and for the quashal of the Writ of Execution dated 23 April 2010.

On 21 July 2010, the MTC issued an Order stating as follows:

WHEREFORE, premises considered, subject defendant's motion is hereby granted, and let the name of Atty. Manileño Apiag be entered into the records as the new counsel for defendant Gilberto Magtuba. The orders of this Court dated February and April 23, 2010 are hereby ordered set aside and quashed, respectively;

defendant's notice of appeal of the decision of this Court dated December 14, 2010, having been filed in due time is hereby ordered approved and let the entire records of this case be forwarded to RTC, Branch 23, Molave, Zamboanga del Sur for appropriate action.[25]

On 3 August 2010, the RTC issued an Order dismissing the petitioners' appeal for failure to pay the required appellate court docket and other fees. However, upon Motion for Reconsideration filed by the petitioners, the RTC issued a Resolution,[26] dated 31 August 2010, giving due course to the petitioners' appeal.

Resolving the petitioners' appeal, the RTC rendered the assailed Decision, dated 15 November 2010, in favor of herein respondent and affirming the ruling of the MTC.

The petitioners now come before this Court in this Petition for Review.

#### Issue

Essentially, the issue raised by the petitioners is this: Was the respondent a purchaser in good faith of the subject parcel of land?

#### Our Ruling

The petition is bereft of merit.

It must be remembered that in the proceedings before the MTC, petitioner Helen Magtuba was declared in default for failure to file her responsive pleading. On the other hand, for the failure of petitioner Gilberto Magtuba and his counsel to appear during the pre-trial conference, the MTC ordered the ex-parte presentation of the respondent's evidence as allowed under Rule 18, Section 5[27] of the Rules of Court.

The above-mentioned rule provides that when the defendant fails to appear at the pre-trial conference, the Court may allow the plaintiff to present his evidence ex-parte and render judgment on the basis thereof.

Under the old Rules of Civil Procedure, a party who fails to appear at the pre-trial conference may be considered as in default. However, under the 1997 Revised Rules of Civil Procedure, the phrase "as in default" no longer appears. Nonetheless, the Supreme Court has held that the effects of the rule were retained:

x x x. Prior to the 1997 Revised Rules of Civil Procedure, the phrase "as in default" was initially included in Rule 20 of the old rules, and which read as follows:

Sec. 2. A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.

It was however amended in the 1997 Revised Rules of Civil Procedure. Justice Regalado, in his book REMEDIAL LAW COMPENDIUM, explained the rationale for the deletion of the phrase "as in default" in the amended provision, to wit:

- This is a substantial reproduction of Section 2 of the former Rule 20 with the change that, instead of defendant being declared "as in default" by reason of his non-appearance, this section now spells out that the procedure will be to allow the ex parte presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. While actually the procedure remains the same, the purpose is one of semantical propriety or terminological accuracy as there were criticisms on the use of the word "default" in the former provision since that term is identified with the failure to file a required answer, not appearance in court.

Still, in the same book, Justice Regalado clarified that while the order of default no longer obtains, its effects were retained, thus:

Failure to file a responsive pleading within the reglementary period, and not failure to appear at the hearing, is

the sole ground for an order of default, except the failure to appear at a pre-trial conference wherein the effects of a default on the part of the defendant are followed, that is, the plaintiff shall be allowed to present evidence ex parte and a judgment based thereon may be rendered against defendant.

As the rule now stands, if the defendant fails to appear for pre-trial, a default order is no longer issued. Instead, the trial court may allow the plaintiff to proceed with his evidence ex parte and the court can decide the case based on the evidence presented by plaintiff.[28] (Citations omitted)

As discussed in the above case, the effects of default are followed when the defendant fails to appear during the pre-trial conference.

The rule is that a defendant who is declared in default loses his standing in court and his right to adduce evidence and to present his defense.[29] By analogy, a defendant who fails to appear at the pre-trial likewise waives his right to adduce evidence in his behalf. Concomitantly, the appellate court may only consider the evidence presented by the plaintiff during the ex-parte presentation of evidence. In the case of *Otero v. Tan*,[30] the Supreme Court said:

Indeed, a defending party declared in default retains the right to appeal from the judgment by default. However, the grounds that may be raised in such an appeal are restricted to any of the following: first, the failure of the plaintiff to prove the material allegations of the complaint; second, the decision is contrary to law; and third, the amount of judgment is excessive or different in kind from that prayed for. In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the ex parte presentation of his evidence.

A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce evidence in his defense, which right he had lost after he was declared in default. Indeed, he is proscribed in the appellate tribunal from adducing any evidence to bolster his defense against the plaintiff's claim. Thus, in *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines*, this Court explained that:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, inter alia, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.[31] (Citations omitted)

Therefore, the only question to be asked is whether herein respondent, the plaintiff in this case, was able to prove the material allegations of his complaint.

We rule in the affirmative.

We agree with both the MTC and RTC in finding that the respondent sufficiently established his right over the subject property.

The evidence presented by the respondent clearly establishes that he purchased the subject parcel of land from Benjamin Remedios and, thereafter, successfully registered the same property in his name.

Benjamin Remedios, the previous owner of the subject land, also confirmed that he sold the same to the

respondent. Further, Benjamin Remedios categorically declared that the alleged previous sale executed in favor of his brother, Gregorio Remedios, is fictitious.

Having waived their right to adduce evidence, the arguments raised by the petitioners in this appeal are, thus, mere allegations and conclusions without sufficient proof. Accordingly, the same deserve scant consideration.

Lastly, the fact that the tax declarations over the property were previously in the name of Gregorio Remedios is of no moment. It is a settled rule that tax declarations do not by themselves conclusively prove title to land.[32] Thus, the said tax declaration in the name of Gregorio Remedios is not sufficient to prove that Gregorio Remedios became the owner of the land in controversy.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The Decision,[33] dated 15 November 2010, rendered by the Regional Trial Court, 9th Judicial Region, Branch 23 of Molave, Zamboanga del Sur is hereby AFFIRMED.

### **SO ORDERED.**

### **CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Ch., and Badelles, JJ., concur.

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[1] Rollo, pp. 6-17.

[2] Rollo, pp. 24-34.

[3] Rollo, pp. 20-23.

[4] Rollo, pp. 36-38.

[5] Rollo, p. 72.

[6] Rollo, p. 69.

[7] Rollo, p. 36.

[8] Ibid.

[9] Rollo, p. 37.

[10] Ibid.

[11] Rollo, pp. 41-44.

[12] Rollo, p. 41.

[13] Ibid.

[14] Rollo, p. 42

[15] Ibid.

[16] Rollo, pp. 50-52.

[17] Rollo, p. 51.

[18] Rollo, pp. 59-61.

[19] Rollo, p. 63.

[20] Rollo, p. 64.

[21] Rollo, pp. 21-23.

[22] Rollo, p. 23.

[23] Rollo, pp. 78-80.

[24] Rollo, pp. 81-82.

[25] Rollo, pp. 27-28.

[26] Rollo, pp. 83-84.

[27] Section 5. Effect of failure to appear. -- The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

[28] The Philippine American Life & General Insurance Company v. Joseph Enario, G.R. No. 182075.

[29] Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines, G.R. No. 148019, 26 July 2004.

[30] G.R. No. 200134, 15 August 2012.

[31] Ibid.

[32] Hemedes v. Court of Appeals, G.R. No. 107132, 8 October 1999.

[33] Supra at note 2.

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