

EVANGELINE ADAYA-EICKMEIER, REPRESENTED BY HER ATTORNEYS-IN-FACT: NOEL ADAYA AND JARRY ADAYA, PETITIONER, VS. HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT BRANCH 18, BATAAC, ...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Addressed here is a Petition for Annulment of Judgment[1] (“Petition for Annulment” for brevity) filed under Rule 47 of the Rules of Court. The Petition for Annulment assails the Decision[2] dated October 9, 2009 of the Regional Trial Court (“respondent court” for brevity) of Bataac, Ilocos Norte, Branch 18 in Civil Case No. 4829-18 for “RESCISSION OF CONTRACT TO SELL, FORFEITURE OF ADVANCES, POSSESSION AND DAMAGES WITH APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION”[3].

In her Petition, petitioner Evangeline Eickmeier (“petitioner” for brevity) averred the following, among others:

“4. A Complaint for Rescission of Contract to Sell, Forfeiture of Advances, Possession and Damages with Application for Preliminary Mandatory Injunction was filed in February, 2007 by the private Respondents and captioned as Sps. Anita Lacro – O'Donnell and Kenneth Michael O'Donnell represented by ROMEO C. LACRO vs. Sps. Evangeline Adaya-Eickmeier and Detlef T. Eickmeier and assigned to the Regional Trial Court, Branch 18, at Bataac City, Ilocos Norte then being presided by Judge Virgilio V. Macaraig;

5.

For failure of the Plaintiffs to comply with the Order of the Court requiring them to submit a written manifestation and to move for the issuance of Summons thru publication due to the unserved Summons as the Defendants (Petitioner herein) were in Germany, the case was DISMISSED without prejudice on April 19, 2007 by Judge Macaraig;

6.

After an Urgent Manifestation and Motion and Second Urgent Manifestation and Motion filed by Plaintiff O'Donnell's counsel, the Court resolved on June 13, 2008 to require that Summons and complaint be made by publication in a newspaper of nationwide circulation and that it DENIED the petition for preliminary injunction;

7.

Publication was allegedly made on their (sic) July 2, 10, and 16, 2008 issues per the Affidavit of Publication signed by the Ads Manager of BALITA tabloid dated July 21, 2009;

8.

After due motion, the Defendants Eickmeiers were declared in default by the Court a quo on March 6, 2009 by the public respondent Hon. Judge Isidore Pobre for their failure to file responsive pleadings within the 60-day period;

9.

After an ex-parte hearing wherein Atty. Bernardo Constantino presented their lone witness Romeo Lacro and their Formal Offer of Exhibits filed, the Court a quo deemed the case submitted for Decision on July 23, 2009; xxx.”[4] (Emphasis supplied)

On October 9, 2009, respondent court rendered the assailed Decision[5], the dispositive portion of which decreed:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

- Declaring the Agreement entered into by the plaintiffs and defendants dated December 3, 2003 as rescinded.
- Declaring the Contract of Lease entered into by the plaintiffs and the defendants dated May 24, 2004 as without force and effect.
- Whatever advance payments made by the defendants to the plaintiffs are hereby forfeited in favor of the latter.
- Ordering the restoration of the property subject matter of Exhibit L and M to the peaceful possession of the plaintiffs to the exclusion of the defendants, and
- Ordering the defendants to pay the plaintiffs the amount of fifty thousand pesos (P50,000.) representing attorney's fees and costs of the suit.

The plaintiffs are hereby ordered to cause the publication of this Decision for once in a newspaper of general circulation pursuant to the provisions of Section 9 of Rule 13 of the 1997 Rules of Civil Procedure.

SO ORDERED.”[6]

On October 28, 2010, petitioner filed before respondent court a “PETITION FOR RELIEF FROM JUDGMENT”[7] on ground of respondent court having failed to acquire jurisdiction over the person of petitioner due to an invalid service of summons[8], and on ground of extrinsic or collateral fraud allegedly committed by Romeo Lacro (“Romeo” for brevity), who was the representative of private respondents Spouses Anita Lacro-O'Donnel and Kenneth Michael O'Donnel (“private respondents” for brevity).[9]

On November 19, 2010, respondent court issued an Order[10] denying petitioner's “PETITION FOR RELIEF FROM JUDGMENT”[11].

On November 11, 2011, petitioner filed the Petition[12] at bench, praying as follows:

“WHEREFORE, PETITIONER prays that the JUDGMENT in this case be rendered:

- Setting aside the DECISION rendered by the Respondent Judge for being contrary to law, unsupported by

evidence, capricious, and arbitrary;

- Ordering the appraisal, inventory, and reimbursement of the fair market value unto Petitioner of personal properties taken out of the residential house subject of the case and auctioned off and otherwise lost, impaired or damaged due to the acts of the Branch Sheriff;

- Ordering the immediate reimbursement to the Petitioner by the Respondents of the [a]mount of P2,439,000.00, inclusive of interest at the legal rate from the date of demand made on February 27, 2009 until fully paid;

- Ordering the private Respondents and Branch Sheriff, if warranted, to pay unto the Petitioner the fair market/appraised value of the personalties taken out of the rented house which were damaged or unaccounted for;

- Ordering private Respondents to pay unto Petitioner the amounts of: P50,000.00 for Attorney's [F]ees; P200,000.00 for [M]oral [D]amages; P100,000.00 for Exemplary Damages; and the costs of this suit.

Other relief and remedies as deemed just and equitable under the premises are likewise prayed for.”[13]
(Emphasis was made in the original)

A reading of the Petition for Annulment[14] at bench reveals that the grounds relied upon by petitioner were lack of jurisdiction and extrinsic fraud, as follows:

“REASONS RELIED UPON FOR THE ALLOWANCE
OF THIS PETITION

- PETITIONER submits that the lower Court FAILED TO OBTAIN JURISDICTION OVER THE PERSON OF THE PETITIONER and her husband particularly due to invalid service of summons committed by Process Server Palmarin Sacro as evidenced by the Return of Service dated March 13, 2007 appearing on page 15 of the record. Mr. Sacro failed to indicate the impossibility of service of summons within a reasonable time;

- The Process Server likewise did not specify the efforts exerted to locate the Petitioners or their legal representatives; nor did he state that summons was served on a person of sufficient age and discretion residing in the house owned by the Petitioner;

xxx

- It is also evident that since the Summons was dated March 12, 2007, and the RETURN OF SERVICE was made after only one (1) day on March 13, 2007, there was an undue haste on the part of the Process Server in serving the Summons and that he did not describe exactly what efforts were taken to find Petitioner or that a tender could be made to the AIFs;

xxx

- Moreover, ROMEO LACRO in his Affidavit appearing on page 27 of the record misrepresented:

‘That while I have done my very best to inquire from all possible acquaintances of the Spouses-defendants in the case as to their whereabouts, I have miserably failed to get any reliable information relative to their possible address right now xxx’;

- Such failure of ROMEO LACRO to divulge the fact that he personally knew the Eickmeiers and their Attorneys-in-fact is particularly dishonest and fraudulent and should be considered as EXTRINSIC OR COLLATERAL FRAUD as during the negotiations for the sale of Lot No. 428, Romeo Lacro, Anita Lacro and the Respondent Anita O'Donnell usually went to the house of the Petitioners at Brgy. 21, 18 M.J. Guerrero Street,

Laoag City and that Romeo Lacro personally knows the AIFs and is very much aware that AIFs NOEL ADAYA and JERRY ADAYA reside in the said house and as a matter of fact he knows that the Petitioner and her husband stayed in their residence in Laoag after the Contract was signed;

xxx

- Romeo Lacro had intentionally and (sic) suppressed the information from the RTC that he personally knows the AIFs of Evangeline Eickmeier and their whereabouts, lest such brothers be notified and appear in court, thereby successfully gaining an opportunity to present the Petitioner's side of the case;

xxx

GROSS VIOLATION OF MCLE RULES BY RESPONDENT'S COUNSEL

- Another proof of extrinsic fraud perpetrated by the Respondents and in particular their counsel's pretense of having complied with the MCLE requirement or exemption therefrom. The same ground may be regarded as a basis for lack of jurisdiction on the part of the lower Court in rendering the DECISION as various pleadings filed by Respondents' counsel should have been disallowed and expunged from the record as they do not indicate his MCLE Certificate of Compliance or Certificate of Exemption pursuant to Bar Matter No. 1922 xxx.

xxx

- That by express provision of Bar Matter No. 1922 issued by the Supreme Court above-mentioned, that '(F)ailure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records,' it is submitted that the lower Court actually committed grave abuse of discretion in admitting the defective pleadings and motions and for not having DISMISSED the case pursuant to plain and mandatory Supreme Court policy;

LACK OF JURISDICTION BY RTC IN UNLAWFUL DETAINER CASE

- That in relation to the CONTRACT OF LEASE, the Hon. Judge Pobre had no jurisdiction over the same as it involved issues constituting UNLAWFUL DETAINER the exclusive jurisdiction to which pertains to the MUNICIPAL TRIAL COURT OF PAOAY, ILOCOS NORTE;"[15] (Emphasis supplied)

To begin with, contrary to petitioner's contention that respondent court had no jurisdiction over the subject matter of the case below, the Complaint[16] for "RESCISSION OF CONTRACT TO SELL, FORFEITURE OF ADVANCES, POSSESSION AND DAMAGES WITH APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION"[17] filed by private respondents against petitioner was within the jurisdiction of the RTC. This is so, considering that "[a]n action for rescission of contract, as a counterpart of an action for specific performance, is incapable of pecuniary estimation, and therefore falls under the jurisdiction of the RTC"[18].

As to petitioner's grounds of lack of jurisdiction over the person of petitioner, and of extrinsic fraud that was allegedly committed by private respondents' representative, Romeo, a perusal of the Petition for Annulment[19] at bench revealed that the same grounds were already relied upon and raised by petitioner when she filed her "PETITION FOR RELIEF FROM JUDGMENT"[20] before respondent court. This matter was even admitted by petitioner in the Petition[21] at bench, as follows:

"14.

That PETITIONER through her Attorneys-in-fact by the undersigned counsel filed a PETITION FOR RELIEF FROM JUDGMENT under Rule 38 of the Rules of Court on October 28, 2010 citing as grounds invalid service of summons, extrinsic fraud and failure of the Plaintiff's counsel to comply with MCLE Compliance

under Bar Matter No. 1922, which similar grounds are adopted in this Petition; xxx.”[22] (Emphasis supplied)

Explicit in the second paragraph of Section 2, Rule 47 of the Rules of Court however, is that extrinsic fraud is not a valid ground to annul a Judgment if such ground was already raised earlier in a Petition for Relief from Judgment. Section 2, Rule 47 of the Rules of Court states:

“SEC. 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.” (Emphasis supplied)

Actually, respondent court, in denying petitioner's “PETITION FOR RELIEF FROM JUDGMENT”[23] in its Order[24] of November 19, 2010, already resolved the issues of lack of jurisdiction over the person of petitioner, and the alleged extrinsic fraud committed by Romeo, in the following manner:

“Defendant Evangeline Eickmeier, represented by her Attorneys-in-Fact, namely: Noel Adaya and Jerry Adaya, through counsel, filed a Petition for Relief from Judgment, seeking the Court to set aside the judgment it rendered in the above-entitled case invoking the following grounds:

First, that the Court did not acquire jurisdiction over the person of the defendants there being no valid service of summons on her.

In support thereof, the defendants argued that the Summons was issued on March 12, 2007, Mr. Paimarin Sacro, the Process Server, with undue haste, made his Return on the same on March 13, 2007 without indicating the impossibility of service thereof to the defendant within a reasonable time. Neither did Mr. Sacro specify therein the efforts he exerted to locate the defendants or their legal representatives nor was it stated therein that the Summons was served upon a person of sufficient age and discretion who is residing at the defendants' given address. And while Mr. Sacro reported to have served the Summons to one Mr. Rolando Adaya, he is not a resident at the defendants' given address but rather the latter's next-door neighbor.

Second, that there is extrinsic or collateral fraud.

The defendants claimed that during their confrontation held at Brgy. 22, Nagbacalan, Paoay, Ilocos Norte sometime in March 2006, with the defendants-spouses Eickmeiers in attendance, along with their Attorneys-in-Fact Noel and Jerry Adaya and plaintiffs Romeo and Anita Lacro, the latter were duly informed by the defendants that [they] had executed a Special Power of Attorney in favor of Noel and Jerry Adaya, for purposes of the said dispute, who both reside at Brgy. 21, No. 18 M.J. Guerrero St., Laoag City. Despite plaintiff's sufficient knowledge of said defendants-spouses' legal representatives and their address, plaintiff Romeo Lacro, in his Affidavit attached to plaintiffs' Motion to Order Service of summons by Publication, xxx dishonestly denied such circumstances and which act amounted to fraud.

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Indeed, the circumstances of the two (2) stated grounds as alleged by the defendants in their petition are borne out by the records. Interestingly, however, the defendants seemed to have not gone over the proceedings that ensued after the said Return of Mr. Sacro was made of record.

The Return of the Summons by the Process Server and the alleged misrepresentation of lack of sufficient knowledge of said defendant-spouses' legal representative and their address by plaintiff representative Romeo Lacro as to the Attorneys-in-Fact to defendants-spouses Eickmeiers, are not at all an issue.

A review of the records of the above-entitled case, readily reveal that the Court upon having noted the said Return on the service of Summons of Mr. Sacro, the Court in its Order dated March 15, 2007, suggested to the

plaintiffs the issuance, upon the latter's proper motion, of another Summons to be effected on the defendants, through publication which the plaintiffs, in turn, complied. Correspondingly, Summons by Publication was issued by the Court on June 18, 2008 xxx to be caused by the plaintiffs to be published in a newspaper of general circulation for three (3) consecutive weeks.

In due time, in compliance thereto, the plaintiffs submitted the Affidavit of Publication executed by the Manager of Balita and the attached copy of the published matter, together with the copies of the three (3) issues of said tabloid dated July 2, 10 and 16, 2008 wherein the said Summons was published. Subsequent thereto, upon written motion of the plaintiffs and due hearing, the Court in its Order dated March 6, 2009, declared the defendants 'in default' for their failure to file their Answer to the Complaint or any responsive pleading within the given period.

It is undisputed that the requirements for a valid service of Summons by publication had been sufficiently complied with by the plaintiffs. As such, contrary to the submission of the defendants, the Court had validly acquired jurisdiction over the said defendants and who, by reason of the publication of the Summons, had been afforded the opportunity to present her case to the Court.

And it bears to stress that the service of Summons to the defendants by publication had effectively cured the defect contended by the defendants in their petition, that in the prior service of Summons by the Process Server and the fraudulent act of plaintiff Romeo Lacro for keeping for himself the fact that the defendants-spouses Eickmeiers had their legal representatives and the latters' address.

In view of the foregoing circumstances obtaining in the records of the above-entitled case, the plaintiff could not be deemed to have used fraud in procuring the judgment without fair submission of the controversy.

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It is to be noted that the Summons was served to Evangeline Adaya-Eickmeier and Detlef K. Eickmeier at Brgy. No. 21, #18, M.J. Guerrero St., Laoag City with the annotation signed by one Rolando Adaya that 'as per info given by Mr. Rolando Adaya, uncle of spouses defendant that they presently (sic) in Germany', xxx.

In the same manner, that a close scrutiny of the Special Power of Attorney executed by Evangeline Adaya-Eickmeier appointing Jerry Adaya and Noel Adaya as her Attorneys-in-fact indicates that the address of said Jerry Adaya and Noel Adaya is Barangay 21, #18, M.J. Guerrero St., Laoag City, Philippines, xxx. It is the very place and address where the RTC Process Server, Palmarin B. Sacro served said Summon.”[25] (Emphasis and underscoring supplied)

Given that petitioner had already availed of the remedy of a Petition for Relief from Judgment, and especially since respondent court had already resolved the same grounds raised by petitioner in the Petition for Annulment[26] at bench, then, the remedy of a Petition for Annulment of Judgment was no longer available to petitioner. This being the consequence is pursuant to the following declaration of the Supreme Court in *Heirs of Maura So, namely, Yan Lam Lim, Jimmy So Lim, and Ferdinand So Lim vs. Lucila Jomoc Oblisosa, et al.*, G.R. No. 147082, January 28, 2008:

“First, annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Thus, it may not be invoked (1) where the party has availed himself of the remedy of new trial, appeal, petition for relief, or other appropriate remedy and lost; or (2) where he has failed to avail himself of those remedies through his own fault or negligence. We, therefore, agree with the CA that the remedy of a petition for annulment of judgment is no longer available to petitioners since their predecessor-in-interest, Maura So, had already availed herself of a petition for review on certiorari under Rule 45 of the Rules of Court.” (Emphasis supplied)

As to petitioner's allegation that respondent court “committed grave abuse of discretion in admitting the defective

pleadings and motions” filed by private respondents’ counsel, such could not be a proper ground to annul respondent court’s Decision.[27] This is because an action for Annulment of Judgment can only be based on “extrinsic fraud”, “lack of jurisdiction”[28], and “lack of due process”[29]; it can not prosper on the basis of “grave abuse of discretion”. This is as is pursuant to the following declaration of the Supreme Court in *Antonino vs. The Register of Deeds of Makati City and Tan Tian Su*:[30]

“xxx [A] petition for annulment of judgment can only be based on 'extrinsic fraud' and 'lack of jurisdiction' and cannot prosper on the basis of 'grave abuse of discretion'. By anchoring her petition on the alleged grave abuse of discretion that attended the dismissal of her complaint and the denial of her two (2) motions for reconsideration, Antonino, is, in effect, enlarging the concept of 'lack of jurisdiction'. As this Court previously clarified in *Republic of the Philippines v. 'G' Holdings, Inc.*, 'lack of jurisdiction' as a ground for the annulment of judgments pertains to lack of jurisdiction over the person of the defending party or over the subject matter of the claim. It does not contemplate 'grave abuse of discretion' considering that 'jurisdiction' is different from the exercise thereof. As ruled in *Tolentino v. Judge Leviste*:

Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.” (Italics was made in the original, emphasis supplied)

The rule is settled that an action for Annulment of Judgment is “an extraordinary remedy, which is not to be granted indiscriminately by the court”[31]. This is especially so, considering that “[i]t is a recourse equitable in character and allowed only in exceptional cases.”[32]

For all these reasons, the Petition at bench was not shown to be *prima facie* meritorious[33], and is therefore DENIED DUE COURSE.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-19

[2] Rollo, pp. 22-31, penned by Acting Presiding Judge Isidoro T. Pobre

[3] Rollo, pp. 59A

[4] Rollo, p. 4

[5] Rollo, pp. 22-31, penned by Acting Presiding Judge Isidoro T. Pobre

[6] Rollo, pp. 30-31

[7] Rollo, pp. 105-118

[8] Rollo, p. 107

[9] Rollo, p. 108

[10] Rollo, pp. 33-36, penned by Presiding Judge Isidoro T. Pobre

[11] Rollo, pp. 105-118

- [12] Rollo, pp. 3-19
- [13] Rollo, pp. 17-18
- [14] Rollo, pp. 3-19
- [15] Rollo, pp. 10-13
- [16] Rollo, pp. 59A-65
- [17] Rollo, pp. 59A
- [18] Patricio A. Villena vs. Patricio S. Payoyo G.R. No. 163021, April 27, 2007
- [19] Rollo, pp. 3-19
- [20] Rollo, pp. 105-118
- [21] Rollo, pp. 3-19
- [22] Rollo, p. 5
- [23] Rollo, pp. 105-118
- [24] Rollo, pp. 33-36, penned by Presiding Judge Isidoro T. Pobre
- [25] Rollo, pp. 33-36
- [26] Rollo, pp. 3-19
- [27] Rollo, pp. 22-31, penned by Acting Presiding Judge Isidoro T. Pobre
- [28] Section 2, Rule 47 of the Rules of Court
- [29] Leticia Diona, represented by her Attorney-in-Fact, Marcelina Diona vs. Romeo A. Balangue, et al., G.R. No. 173559, January 7, 2013
- [30] G.R. No. 185663, June 20, 2012.
- [31] Andrew B. Nudo vs. Hon. Amado S. Caguioa, et. al., G.R. No. 176906, August 4, 2009
- [32] Republic of the Philippines vs. Technological Advocates for Agro-Forest Programs Association, Inc., G.R. No. 165333, February 9, 2010
- [33] Section 5, Rule 47, Rules of Court

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