

FRANCISCO O. TAN, PETITIONER, VS. COURT OF APPEALS, FILOMENA MANGUBAT AND MAXIMO SALUDSOD, RESPONDENTS.

G.R. No. L-48619. June 20, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Review on Certiorari, Francisco O. Tan seeks to set aside the joint decision of the Court of Appeals in C.A.-G.R. No. 48407-R and C.A.-G.R. No. 50221-R dated 16 January 1978, as well as its subsequent Resolution dated 15 June 1978 denying his Motion for Reconsideration.

1. Civil Case No. 2551

The present Petition for Review on Certiorari and the two (2) appealed cases before the Court of Appeals disposed of in the joint decision of 16 January 1978, find their origin in Civil Case No. 2551, of the Court of First Instance of Misamis Occidental entitled "Heirs of Severino Mangubat, et al. v. Francisca Vda. de Uy, Francisco O. Tan, et al." This action was brought to annul certain deeds of sale executed by Severino Mangubat in favor of Susano Uy (late husband of Francisca Vda. de Uy), upon the principal ground that those deeds of sale had been executed through fraud, mistake, error and undue influence. In their Answer, the defendants therein denied the allegations of the complaint, set up the defense of prescription and counterclaimed for moral damages and attorney's fees.

On 15 September 1967, the trial court, with Judge Mariano A. Zosa presiding, rendered a decision declaring the plaintiffs therein non-suited, dismissing the complaint and ordering the plaintiffs therein to pay the defendants on their counterclaim P2,000.00 as moral damages and P500.00 as attorney's fees and costs.

The decision in Civil Case No. 2551 became final and a Writ of Execution was issued by the trial court to implement the award of P2,000.00 as moral damages and P500.00 as attorney's fees plus P35.00 as costs. The Sheriff levied upon and sold at public auction on 6 June 1968 to Francisco O. Tan a parcel of residential land. As the heirs of Severino Mangubat failed to redeem the property within the redemption period, an Absolute Deed of Sale was executed by the Sheriff in favor of Francisco O. Tan over the residential lot.

2. Civil Case No. 2770; CA-G.R. No. 48407

On 31 March 1970, petitioner Francisco O. Tan instituted an action to recover possession of a parcel of land with damages, against respondents Filomena Mangubat and her husband Maximo Saludsod, in the Court of First Instance of Misamis Occidental. This case was docketed as Civil Case No. 2770. Francisco O. Tan there alleged that he had been the highest bidder at the public auction sale on 6 June 1968, where he had bought a parcel of residential land; that the judgment debtors had failed to exercise their right of redemption and that consequently, an absolute deed of sale was executed in his favor on 27 January 1970; that defendant spouses (respondents herein) remained in possession and occupation of the residential lot involved refusing to give up the same. The defendants, in turn, contended that the lot involved had been acquired by Filomena Mangubat through inheritance from her mother, Dionisia Darang; and that in 1956, they had constructed a house thereon from conjugal funds

such that both the house and lot became the respondent spouses' conjugal property.

On 17 December 1970, the trial court, through Judge Mariano A. Zosa, rendered a decision in Civil Case No. 2770 ordering the private respondent spouses to vacate the disputed parcel of land, to deliver its possession to Francisco O. Tan and to pay the amount of P400.00 as damages, attorney's fees and costs.

From that decision, Filomena Mangubat and her husband interposed an appeal to the Court of Appeals, which appeal was docketed as CA-G.R. No. 48407-R.

3. Civil Case No. 2785; C.A.-G.R. No. 50221-R

On 9 July 1970, the heirs of Severino Mangubat (including private respondent Filomena Mangubat) commenced an action against Francisca Vda. de Uy and Francisco O. Tan, for annulment of the judgment of the trial court in Civil Case No. 2551. This action for annulment was docketed as Civil Case No. 2785 of the Court of First Instance of Misamis Occidental. In this case, the heirs of Severino Mangubat claimed, among other things, that the execution sale to Francisco O. Tan of the residential lot involved in Civil Case No. 2770, was not valid because, *inter alia*, there had been no proper levy on execution nor notice thereof to the individual heirs.

Civil Case No. 2785 was, on 6 July 1971, dismissed by the trial court (again through Judge Mariano O. Zosa) for lack of merit. The heirs of Severino Mangubat appealed this decision to the Court of Appeals, which appeal was docketed as C.A.-G.R. No. 50221-R.

On 16 January 1978, the Court of Appeals^[1] rendered a joint decision on the two (2) appealed cases: the dismissal of Civil Case No. 2785 was affirmed; the judgment in Civil Case No. 2770 was reversed. The dispositive part of the joint decision^[2] read as follows:

"WHEREFORE, judgment is hereby rendered:

1) In CA-G.R. No. 50221-R, affirming the judgment appealed from in Civil Case No. 2785 of the Court of First Instance of Misamis Occidental dismissing the Complaint therein, but annulling the auction sale and the absolute sale of the subject property made by the sheriff in favor of Francisco Tan on January 27, 1970 in Civil Case No. 2551. (*Italics supplied*)

2) In CA-G.R. No. 48407-R reversing the judgment appealed from and dismissing the Complaint in Civil Case No. 2770 of the Court of First Instance of Misamis Occidental, without prejudice to the enforcement, if still possible, of the judgment on the counterclaim in Civil Case No. 2551. The counterclaim of defendants-appellants in the above-mentioned Civil Case No. 2770 is also denied.

Without pronouncement as to costs in both cases.

SO ORDERED."

Separate Motions for Reconsideration were filed by the heirs of Severino Mangubat and by Francisco O. Tan; these were jointly denied by the Court of Appeals on 15 June 1979.

Only petitioner Francisco O. Tan came to this Court. The appealed joint decision became final and executory with respect to the heirs of Severino Mangubat and judgment was accordingly entered in respect of them on 29 June 1978.

In his Petition and Memorandum, petitioner Tan urges, firstly, that the residential lot levied upon and the lot which was sold to him at public auction (to satisfy the judgment in Civil Case No. 2551) "refer substantially to one and the same parcel of land"; secondly, that the Court of Appeals had reversed the decision of the trial court upon a ground that had not been raised by private respondents as an affirmative defense in their responsive

pleadings. We deal with these arguments below seriatim.

Petitioner's first ground relates to the identity of the lot that was sold to him at public auction. In the decision sought to be reviewed, the Court of Appeals said:

"x x x We find a fatal defect in the execution proceedings which followed in the wake of that judgment. It is to be noted that execution was on the counterclaim for damages and not on the principal case. Levy was made by the sheriff on April 4, 1968 on:

'A parcel of land part cornland with an area of .4993 Ha. and part residential with an area of 600 sq. meters, located at Loboc, Oroquieta, Misamis Occidental, under Cadastral Lot No. 3, Psu-139290 x x x.' (Italics supplied)

The levy on execution was duly inscribed by the Register of Deeds on April 4, 1968 (Exhibit 15-A). The first Notice of Auction Sale published in the April 13, 1968 issue of the Misamis Weekly recited the same parcel of land (Exhibits 11 and 13). A Corrected Notice of Auction Sale, however, was issued by the Sheriff on April 19, 1968 reciting a different parcel of land, thus:

'A parcel of residential lot (sic) (Lot 8860, Cad 310-D) formerly a portion of Lot No. 3 situated at Loboc, Oroquieta, Misamis Occ. x x x containing on area of 1,333 square meters.'

The Corrected Notice of Auction Sale was published in the Misamis Weekly on May 4, 1958 (Exhibit 14). Significantly, the said parcel of land was never levied upon nor is there evidence to show that the Register of Deeds had made an entry thereof. Again, publication of the sale of the first parcel was made only once (Exhibit 13). Similarly, the corrected Notice of Auction Sale was also published only once (Exhibit 14)," (Italics supplied)

Petitioner argues that the description of the property levied upon and the description of the land sold at public auction "in fact refer substantially to one and the same parcel of land." [3] Petitioner claims that prior to the cadastral survey for the then Municipality of Oroquieta, Misamis Occidental, a PSU (private) survey was undertaken covering the land of the Mangubat family and in that survey, their land was designated as Lot No. 3. In the subsequent cadastral survey, however, petitioner continues, the residential lot on which the conjugal home of the private respondents was erected, was segregated from Lot No. 3 and designated as "Lot No. 8860, Cad. 310-D," and hence, in the corrected Notice of Auction Sale, the property levied upon was described as Lot No. 8860, Cad. 310 and as being a "portion of Lot No. 3." Thus, petitioner contends:

"It is therefore clear that the property sold, referring to Lot No. 8860, formed part of the bigger parcel that was levied upon, in the levy on execution, marked exhibit (15), and consequently, there was therefore substantial compliance of (sic) the requirement of law on levy."

Petitioner's argument is more ingenious than substantial. In the first place, petitioner here assails a finding of fact made by the Court of Appeals. It is firmly settled that findings of fact of the Court of Appeals are final and binding upon this Court, if borne out by the evidence on record. [4] There are of course certain recognized exceptions none of which, however, find any application here. In the instant Petition, petitioner has not adduced any compelling reason for overturning the findings of fact of the Court of Appeals assailed by him.

In the second place, the descriptions of the two (2) parcels of land are, on their face, different: (a) in respect of the nature of the lots, the lot levied upon was described as "cornland" while the lot sold was described a "residential lot"; (b) in respect of the technical description, the lots levied upon was described as "Cadastral Lot No. 3, Psu-139290," while the lot sold was described as "Lot 8860, Cad. 310-D"; and (c) in respect of area, the lot levied upon had an area of .4993 hectare while the lot sold had an area of 1,333 square meters. Moreover, to the mind of the Court, to accept petitioner's contention that a levy of the bigger parcel of land is substantially a levy upon any smaller portion thereof, can only encourage imposition, deception and trickery upon property owners.

Finally, and most importantly, even if one assumed that Cadastral Lot No. 3, Psu-139290 and Lot No. 8860, Cad. 310-D were "substantially" one and the same parcel of land, the levy upon the land sold remained legally defective. The levy upon that lot was not registered with the Register of Deeds.[5] Further, the notice of sale of Cadastral Lot No. 3, Psu-139290 was published only once, as was the corrected Notice of Auction Sale referring to Lot No. 8860, Cad. 310-D. instead of the reglementary once a week for twenty (20) days, in a newspaper of general circulation in the Province where the property was located.[6] It is settled that the valid levy on execution is indispensable for a valid execution sale.[7] Because the execution sale to Francisco O. Tan of the residential lot No. 8860, Cad. 310-D had not been preceded by a valid levy on that same lot, the reglementary requirements for a valid levy not having been strictly complied with, that sale was correctly held by the Court of Appeals as void and ineffectual to transfer any right to petitioner Tan over residential Lot No. 8860, Cad. 310-D.

Petitioner argues next that the issue of lack of compliance with the requirements of a valid levy, had not been raised in the pleadings below and that the Court of Appeals erred in passing upon that issue for the first time on appeal. This argument is equally unpersuasive. Petitioner was the complainant in Civil Case No. 2770 who claimed ownership of the residential lot here involved, claiming to have acquired the same by public auction sale. Private respondents traversed the allegations of ownership by petitioner. It follows that petitioner was bound to prove his allegations and an essential element of that ownership was, precisely, the valid levy necessary for a valid execution sale. Moreover, the issue of lack of proper levy had in fact been raised in Civil Case No. 2785 where petitioner was a defendant and private respondent Filomena Mangubat was one of the plaintiffs, which issue was later brought on appeal before the Court of Appeals. When petitioner suggested joint decision of C.A.-G.R. Nos. 48407-R and 50221-R, he was or should have been aware that the appellate court, would pass upon the question of propriety of the levy on execution, such question being one of the issues raised explicitly in C.A.-G.R. No. 50221-R.[8] Petitioner thus had ample opportunity to resist the argument of lack of valid levy; his claim that he was deprived of opportunity to present evidence thereon, rings hollow.

Still further, even if lack of proper levy and publication had never been explicitly raised as a defense by private respondents here, the Court of Appeals, in the exercise of its broad discretionary authority, could still properly pass upon this issue for the complete adjudication of the rights and obligations of the parties before it.[9]

In *Hernandez v. Anda*,^[10] this Court said:

"In line with the modern trends of procedure, we are told that, 'while an assignment of error which is required by law or rule of court has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive the lack of assignment of errors and considered errors not assigned And an unassigned error closely related to an error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.'" (Italics supplied)

In *Paterno v. Jao Yan*,^[11] it was stressed by the Court that "x xx it is within the discretion of the appellate court to consider an unassigned error that is closely related to an error properly assigned." Among the errors attributed to the trial court by private respondents in C.A.-G.R. No. 48407-R was its failure to find that the land in question was conjugal property of the defendant-appellant spouses, and that trial court's ruling that plaintiff-appellee Francisco O. Tan was entitled to the conveyance and possession of the land in question. As pointed out above, petitioner Francisco O. Tan's right to the ownership and possession of the land in question depended upon the validity of the levy thereon on execution.

ACCORDINGLY, the Petition for Certiorari is DENIED. The decision of the Court of Appeals dated 16 January 1978 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Through Melencio-Herrera, J.

[2] Petitioner Tan, through counsel, objected to the proposed consolidation of the appealed cases but suggested a joint decision thereon by only one division to avoid conflicting rulings.

[3] Rollo, p. 70.

[4] Sese v. Intermediate Appellate Court, 152 SCRA 585 (1987); Sacay v. Sndiganbayan, 142 SCRA 593 (1986); Moran Jr., v. Conn of Appeals, 133 SCRA 88 (1984); and Chacon Enterprises v. Court of Appeals, 124 SCRA 784(1983).

[5] Rule 39. Section 15 in relation to Rule 57, Section 7 (a), Revised Rules of Court.

[6] Rule 39. Section 18 (c). Revised Rules of Court.

[7] Siari Valley Estates, Inc. v. Filemon Lu&asan, et al.; 109 Phil. 294 (1960); Valenzuela v. Aguilar, 8 SCRA 212 (1963).

[8] Decision of the Court of Appeals, p. 15: Rollo, p. 29,

[9] Insular Life Assurance Co.. Ltd. Employees Association-Natu v Insurance Life Assurance Co.. Ltd.; 76 SCRA 50 (1977).

[10] 78 Phil, 190 al 209-210(1947).

[11] 1 SCRA 631 at 635 (1961).

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