

MARCELINO M. FLORETE, PETITIONER, VS. HON. QUERUBE C. MAKALINTAL, JUDGE OF FIRST INSTANCE OF ILOILO, CESAREO C. GOLEZ, AS MANAGER OF LUZON SURETY CO. INC., ILOILO AGENCY, SOFRON...

G.R. No. L-5712. February 27, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

Ascribing grave abuse of discretion to the respondent Judge Querube Makalintal, the petitioner Marcelino M. Florete seeks to annul the order dismissing his amended complaint in Civil Case No. 2048 of the Iloilo Court of First Instance.

For the purpose of this decision, simplified statement may be made as follows:

On September 5, 1950, the Iloilo court issued a writ of execution to enforce the money judgment the Luzon Surety Co. had obtained against Ernesto Solidum in Civil Cases Nos. 1160 and 1189 of the same court. Pursuant thereto the sheriff levied, on September 22, 1950, a definite attachment upon certain lot of Solidum that had been preliminarily attached on February 26, 1949.

The petitioner herein, Florete, interposed a third-party claim; but the sale on execution proceeded because a bond was duly filed under section 15 of Rule 39. Successful purchaser at the public auction was Cesareo Golez for the Luzon Surety Co.

Then Florete commenced Civil Case No. 2048 to recover the land plus damages, alleging ownership thereof pursuant to a purchase by him from Dionisio Barrera, who had acquired the land from Solidum in September 1947.

Meanwhile as the period for redemption of the property was running low, herein petitioner asked the court in Civil Case No. 2048 for an order suspending it for the duration of his complaint in said Civil Case No. 2048. Even as the court denied his request, he repurchased the property shortly before the expiration of the one-year term.

Thereafter the defendants in said civil case No. 2048 lost no time to move for its dismissal, contending that having received full satisfaction of their judgment with the redemption money paid by Florete, they perceived no necessity of continuing the litigation, since plaintiff could thereby repossess the land[1]. The motion to dismiss was granted, over the objection and request for reconsideration of Florete, who subsequently, formulated the instant certiorari proceedings here.

Upon careful deliberation we find that the cause must be dismissed, for the reason that petitioner had a plain and adequate remedy by appeal from the order dismissing his complaint in Iloilo.

If it were argued that his time to appeal had already lapsed when he submitted this certiorari petition, the reply would be that such circumstance does not alter the legal situation and governing principle[2]. Otherwise, those

which thru negligence or some other reason fail to make their appeal in time, will resort to special civil action to review decisions that have become executory due to expiration of the statutory period.

The record discloses no saving or exceptional feature. On the contrary it appears that the herein petitioner acquired this land in August 1948, i. e. after a lis pendens (case No. 1160) had been duly noted in March 1948, on the corresponding certificate of title at the request of Luzon Surety Company.

Wherefore this petition is dismissed with costs. So ordered.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Estoppel was likewise asserted, but it is irrelevant now.

[2] Government v. Judge of Pampanga 50 Phil. 975; Bataclan v. Court of First Instance of Cavite 61 Phil. 428; Profeta v. Gutierrez David 40 Off. Gaz. (14th Sup.) p. 152.

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