

**LOURDES NAVARRO AND MENARDO NAVARRO, PETITIONERS, VS.
COURT OF APPEALS, JUDGE BETHEL KATALBAS-MOSCARDON,
PRESIDING JUDGE, REGIONAL TRIAL COURT OF BACOLOD CITY,
BRANCH 52, SIXTH ...**

G.R. No. 101847. May 27, 1993

Ponente: MELO, J.

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MELO, J.:

Assailed and sought to be set aside by the petition before us is the Resolution of the Court of Appeals dated June 20, 1991 which dismissed the petition for annulment of judgment filed by the Spouses Lourdes and Menardo Navarro, thusly:

The instant petition for annulment of decision is DISMISSED.

1. Judgments may be annulled only on the ground of extrinsic or collateral fraud, as distinguished from intrinsic fraud (*Canlas vs. Court of Appeals*, 164 SCRA 160, 170). No such ground is alleged in the petition.
2. Even if the judgment rendered by the respondent Court were erroneous, it is not necessarily void (*Chereau vs. Fuentebella*, 43 Phil. 216). Hence, it cannot be annulled by the proceeding sought to be commenced by the petitioners.
3. The petitioners' remedy against the judgment enforcement of which is sought to be stopped should have been appeal.

SO ORDERED. (pp. 24-25, Rollo.)

The antecedent facts of the case are as follows:

On July 23, 1976, herein private respondent Olivia V. Yanson filed a complaint against petitioner Lourdes Navarro for "Delivery of Personal Properties With Damages". The complaint incorporated an application for a writ of replevin. The complaint was later docketed as Civil Case No. 716 (12562) of the then Court of First Instance of Bacolod (Branch 55) and was subsequently amended to include private respondent's husband, Ricardo B. Yanson, as co-plaintiff, and petitioner's husband, as co-defendant.

On July 27, 1976, then Executive Judge Oscar R. Victoriano (later to be promoted and to retire as Presiding Justice of the Court of Appeals) approved private respondents' application for a writ of replevin. The Sheriff's Return of Service dated March 3, 1978 affirmed receipt by private respondents of all the pieces of personal property sought to be recovered from petitioners.

On April 30, 1990, Presiding Judge Bethel Katalbas--Moscardon rendered a decision, disposing as follows:

Accordingly, in the light of the foregoing findings, all chattels already recovered by plaintiff by virtue of the Writ of Replevin and as listed in the complaint are hereby sustained to belong to plaintiff being the owner of these properties; the motor vehicle, particularly that Ford Fiera Jeep registered in and which had remain in the

possession of the defendant is likewise declared to belong to her, however, said defendant is hereby ordered to reimburse plaintiff the sum of P6,500.00 representing the amount advanced to pay part of the price therefor; and said defendant is likewise hereby ordered to return to plaintiff such other equipment[s] as were brought by the latter to and during the operation of their business as were listed in the complaint and not recovered as yet by virtue of the previous Writ of Replevin. (p. 12, Rollo.)

Petitioner received a copy of the decision on January 10, 1991 (almost 9 months after its rendition) and filed on January 16, 1991 a "Motion for Extension of Time To File a Motion for Reconsideration". This was granted on January 18, 1991. Private respondents filed their opposition, citing the ruling in the case of *Habaluyas Enterprises, Inc. vs. Japson* (142 SCRA 208 [1986]) proscribing the filing of any motion for extension of time to file a motion for new trial or reconsideration. The trial judge vacated the order dated January 18, 1991 and declared the decision of April 30, 1990 as final and executory. (Petitioners' motion for reconsideration was subsequently filed on February 1, 1991 or 22 days after the receipt of the decision).

On February 4, 1991, the trial judge issued a writ of execution (Annex "5", p. 79, Rollo). The Sheriff's Return of Service (Annex "6", p. 82, Rollo) declared that the writ was "duly served and satisfied". A receipt for the amount of P6,500.00 issued by Mrs. Lourdes Yanson, co-petitioner in this case, was likewise submitted by the Sheriff (Annex "7", p. 83, Rollo).

On June 26, 1991, petitioners filed with respondent court a petition for annulment of the trial court's decision, claiming that the trial judge erred in declaring the non-existence of a partnership, contrary to the evidence on record.

The appellate court, as aforesaid, outrightly dismissed the petition due to absence of extrinsic or collateral fraud, observing further that an appeal was the proper remedy.

In the petition before us, petitioners claim that the trial judge ignored evidence that would show that the parties "clearly intended to form, and (in fact) actually formed a verbal partnership engaged in the business of Air Freight Service Agency in Bacolod"; and that the decision sustaining the writ of replevin is void since "the properties belonging to the partnership do not actually belong to any of the parties until the final disposition and winding up of the partnership" (p. 15, Rollo). These issues, however, were extensively discussed by the trial judge in her 16-page, single-spaced decision.

We agree with respondents that the decision in this case has become final. In fact a writ of execution had been issued and was promptly satisfied by the payment of P6,500.00 to private respondents.

Having lost their right of appeal, petitioners resorted to annulment proceedings to justify a belated judicial review of their case. This was, however, correctly thrown out by the Court of Appeals because petitioners failed to cite extrinsic or collateral fraud to warrant the setting aside of the trial court's decision. We respect the appellate court's finding in this regard.

Petitioners have come to us in a petition for review. However, the petition is focused solely on factual issues which can no longer be entertained. Petitioners' arguments are all directed against the decision of the regional trial court; not a word is said in regard to the appellate court's disposition of their petition for annulment of judgment. Verily, petitioners keep on pressing the idea that a partnership exists on account of the so-called admissions in *judicio*. But the factual premises of the trial court were more than enough to suppress and negate petitioners' submissions along this line:

To be resolved by this Court factually involved the issue of whether there was a partnership that existed between the parties based on their verbal contention; whether the properties that were commonly used in the operation of Allied Air Freight belonged to this alleged partnership business; and the status of the parties in

this transaction of alleged partnership. On the other hand, the legal issue revolves on the dissolution and winding up in case a partnership so existed as well as the issue of ownership over the properties subject matter of recovery.

As a premise, Article 1767 of the New Civil Code defines the contract of partnership to quote:

"ART. 1767. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the proceeds among themselves.

x x x x x x x x."

Corollary to this definition is the provision in determining whether a partnership exist as so provided under Article 1769, to wit:

x x x x x x x x

Furthermore, the Code provides under Article 1771 and 1772 that while a partnership may be constituted in any form, a public instrument is necessary where immovables or any rights is constituted. Likewise, if the partnership involves a capitalization of P3,000.00 or more in money or property, the same must appear in a public instrument which must be recorded in the Office of the Securities and Exchange Commission. Failure to comply with these requirements shall only affect liability of the partners to third persons.

In consideration of the above, it is undeniable that both the plaintiff and the defendant-wife made admission to have entered into an agreement of operating this Allied Air Freight Agency of which the plaintiff personally constituted with the Manila Office in a sense that the plaintiff did supply the necessary equipments and money while her brother Atty. Rodolfo Villaflores was the Manager and the defendant the Cashier. It was also admitted that part of this agreement was an equal sharing of whatever proceeds realized. Consequently, the plaintiff brought into this transaction certain chattels in compliance with her obligation. The same has been done by the herein brother and the herein defendant who started to work in the business. A cursory examination of the evidences presented no proof that a partnership, whether oral or written had been constituted at the inception of this transaction. True it is that even up to the filing of this complaint those movables brought by plaintiff for the use in the operation of the business remain registered in her name.

While there may have been co-ownership or co-possession of some items and/or any sharing of proceeds by way of advances received by both plaintiff and the defendant, these are not indicative and supportive of the existence of any partnership between them. Article 1769 of the New Civil Code is explicit. Even the books and records retrieved by the Commissioner appointed by the Court did not show proof of the existence of a partnership as conceptualized by law. Such that if assuming that there were profits realized in 1975 after the two-year deficits were compensated, this could only be subject to an equal sharing consonant to the agreement to equally divide any profit realized. However, this Court cannot overlook the fact that the Audit Report of the appointed Commissioner was not highly reliable in the sense that it was more of his personal estimate of what is available on hand. Besides, the alleged profits was a difference found after valuating the assets and not arising from the real operation of the business. In accounting procedures, strictly, this could not be profit but a net worth.

In view of the above factual findings of the Court it follows inevitably therefore that there being no partnership that existed, any dissolution, liquidation or winding up is beside the point. The plaintiff herself had summarily ceased from her contract of agency and it is a personal prerogative to desist. On the other hand, the assumption by the defendant in negotiating for herself the continuance of the Agency with the principal in Manila is comparable to plaintiff's. Any account of plaintiff with the principal as alleged, bore no evidence as no collection was ever demanded of from her. The alleged P20,000.00 assumption specifically, as would have been testified to by the defendant's husband remain a mere allegation.

As to the properties sought to be recovered, the Court sustains the possession by plaintiff of all equip-ments

and chattels recovered by virtue of the Writ of Replevin. Considering the other vehicle which appeared registered in the name of the defendant, and to which even she admitted that part of the purchase price came from the business claimed mutually operated, although the Court have not as much considered all entries in the Audit report as totally reliable to be sustained insofar as the operation of the business is concerned, nevertheless, with this admission of the defendant and the fact that as borne out in said Report there has been disbursed and paid for this vehicle out of the business funds in the total sum of P6,500.00, it is only fitting and proper that validity of these disbursements must be sustained as true (Exhs. M-1 to M-3, p. 180, Records). In this connection and taking into account the earlier agreement that only profits were to be shared equally, the plaintiff must be reimbursed of this cost if only to allow the defendant continuous possession of the vehicle in question. It is a fundamental, moral and civil injunction that no one shall enrich himself at the expense of another. (pp. 71-75, Rollo.)

Withal, the appellate court acted properly in dismissing the petition for annulment of judgment, the issue raised therein having been directly litigated in, and passed upon by, the trial court.

WHEREFORE, the petition is DISMISSED. The Resolution of the Court of Appeals dated June 20, 1991 is AFFIRMED in all respects.

No special pronouncements is made as to costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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