

**TOP MANAGEMENT PROGRAMS CORPORATION, PETITIONER, VS.
THE COURT OF APPEALS, JUDGE APOLONIO R. CHAVEZ, JR. IN HIS
CAPACITY AS JUDGE OF THE REGIONAL TRIAL COURT OF THE
NATIONAL CAP...**

G.R. No. 102996. May 28, 1993

Ponente: NOCON, J.

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NOCON, J.:

On November 28, 1991, the Court of Appeals dismissed a petition for annulment of three orders issued by the Regional Trial Court of Pasig, Branch 164.[1] The court held that there existed no extrinsic fraud which would justify the annulment of the questioned orders. This petition for certiorari was brought to Our attention to review the said decision.

Private respondents Tomas Trinidad and Luis Fajardo filed Civil Case No. 35305 before the Regional Trial Court of Pasig, Branch 164 to enforce an Agreement whereby they were entitled to receive a large tract of land upon the success of the appeal of the Heirs of Gregorio against Jose Velasquez.[2]

The late Emilio Gregorio, predecessor of the Heirs of Gregorio, entered into an agreement with Tomas Trinidad and Luis Fajardo entitled "Kasunduan na may Pambihirang Kapangyarihan." The subject of the agreement is the appeal taken by Emilio Gregorio from a decision whereby two lots adjudicated to him (in LRC Case No. 5053) were in fact the same lots adjudicated to applicant Jose Velasquez in another land registration case (LRC Case No. 5416).[3] By virtue of this agreement, Fajardo would finance the cost of the litigation and in return would be entitled to one half of the subject property after deducting twenty per cent of the total land area as attorney's fee for Trinidad if the appeal is successful.[4]

Judgment in Civil Case No. 35305 was rendered in favor of private respondents Trinidad and Fajardo. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering herein defendants:

(1) to convey to Atty. Tomas Trinidad as honorarium for his services an area of 14,684 sq.m. which is twenty percent (20%) of 72,424 sq.m. the total area of Lots 1,2,3 and 4;

(2) to convey to Luis Fajardo an area of 29,369 sq.m. representing fifty percent (50%) of the remainder of the property after deducting the honorarium of Atty. Trinidad.

(3) to pay the cost of suit and litigation expenses.

SO ORDERED."[5]

The appeal taken by the Heirs of Gregorio was declared abandoned and dismissed by the Court of Appeals and by virtue of an Entry of Judgment rendered by the respondent Court dated December 8, 1988, private respondents Trinidad and Fajardo filed a motion for the issuance of a writ of execution of the judgment rendered in Civil Case

No. 35305.[6]

The respondent Court also found that:

"Apparently, the writ of execution to enforce the judgment had been duly issued, for on April 10, 1989, the Sheriff filed his Return stating that the writ remained unsatisfied.

Thereafter, plaintiffs through counsel filed a Motion Ex-parte for the Appointment of Sheriff of the Court to Execute the Deed of Conveyance of property covered by final judgment of the Court of Appeals In Accordance with Section 10, Rule 39 of the Rules of Court.

In the order of August 14, 1989, the respondent court appointed Deputy Sheriff Marcial Estrellado to execute the deed of conveyance in favor of plaintiffs. (Trinidad and Fajardo)

xxx.

On October 2, 1989, the Sheriff submitted a report informing that the deed of conveyance executed by him was duly annotated on TCT No. S-91911 of the Register of Deeds of Las Piñas and that a subdivision plan duly approved by the Bureau of Lands Management and Department of Environment and Natural Resources or the Land Registration Authority was needed for the transfer.

Accordingly, the Motion Ex-Parte for Approval of the Subdivision Plan as per Decision of the Court and To Order Issuance of Separate Titles as per Decision was filed by the plaintiffs for the court's consideration.

In the Order dated November 13, 1989, the respondent court gave Deputy Sheriff Estrellado five (5) days within which to file a supplemental report after which the court would act on the pending motion. On November 16, 1989, the Deputy Sheriff informed the court that on August 25, 1989, the Register of Deeds of Las Piñas wrote him a letter-reply indicating that the deed of conveyance he executed and the Order of the court dated August 14, 1989 entered as Entry No. 6593 and 6594 in their docket book could not be pursued because the subject parcel of land was already sold to other parties.

On December 14, 1989, an Order was issued by the respondent court directing the Register of Deeds of Las Piñas, Metro Manila to undertake a comprehensive study and submit an official report to the Court why he could not annotate the deed of conveyance dated August 15, 1989 pursuant to the Order of August 14, 1989.

On February 5, 1990, the Register of Deeds submitted his report.

On May 11, 1990, the respondent court issued an Order, withdrawing its Order of August 14, 1989 designating its Deputy Sheriff to execute the deed of conveyance in favor of the plaintiffs; denying the motion ex-parte for approval of subdivision plan, etc., without prejudice for the plaintiffs to file a separate civil action against all parties concerned for the enforcement of their rights and similar to that as contemplated in Section 6 of Rule 39 of the Rules of Court inasmuch as the execution over the property cannot be satisfied.

Upon motion of the plaintiffs for reconsideration of the aforesaid order, on December 18, 1990, considering the testimony of the Register of Deeds of Las Piñas, Metro Manila, to the effect that TCT No. 91911 is still existing and that there is no order from any court cancelling it, the respondent court granted the motion for reconsideration. It withdrew its Order dated May 11, 1990 and reinstated the Order of August 14, 1989 designating Deputy Sheriff Marcial Estrellado to execute the deed of conveyance in favor of the plaintiffs.

Acting upon the motion for reconsideration, on May 28, 1991, the respondent court directed the Register of Deeds of Las Piñas, Metro Manila, to annotate the Deed of Conveyance prepared by Deputy Sheriff Marcial Estrellado, at the back of TCT 91911 in the name of the defendants (sic, herein private respondents Trinidad and Fajardo)[7] within 24 hours from receipt of said order.

On June 7, 1991, the respondent court reiterated its order on the Register of Deeds of Las Piñas to implement

and/or or comply with the order of May 28, 1991.[8]

On June 26, 1991, the lower court authorized the subdivision of Lot 1, Psu-204787 and directed the Register of Deeds of Las Piñas to issue separate titles in favor of private respondents.[9]

On September 24, 1991, Petitioner Corporation filed a petition for annulment of the orders of the lower court dated December 18, 1990, May 28, 1991 and June 7, 1991, on the ground of extrinsic fraud.[10] Petitioner claims that it holds TCT No. 8129, the title over the same parcel of land over which execution is being levied.

Petitioner alleged that it owns a parcel of land located at Las Piñas consisting of 20,000 square meters, more or less, identified as Lot 1-A Psd-293076, being a portion of Lot 1, Pau-203785, LRC Rec. No. N--27523 covered by TCT No. T-8129 of the Registry of Deeds of Las Piñas, Metro Manila; that it acquired the same for value and in good faith from the heirs of Emilio Gregorio on January 9, 1989; and that from that date up to the present is in actual possession of the property.[11]

Petitioner further alleged that the Orders[12] in question are void on the ground that the judge of the lower court did not have any jurisdiction to order the Sheriff to levy on execution and, as a consequence thereof, convey unto private respondents the property owned by and titled in the name of the petitioner.[13]

On November 28, 1991, the Court of Appeals rendered the questioned decision dismissing the petition for annulment. The respondent Court held:

"We hold that respondent court has acted within its jurisdiction to issue the orders being assailed in this proceeding. Such exercise of jurisdiction cannot be characterized as extrinsic fraud by the petitioner. Verily, the instant petition deserves no other fate than dismissal.

The fact that petitioner claims that Lot 1-A, a subdivision of Lot 1, Psu-204785, LRC Rec. No. N-27523, belongs to it and is now covered by TCT No. T-8129 of the Registry of Deeds of Las Piñas, Metro Manila, did not divest the respondent court of its jurisdiction to issue the assailed orders to carry out the implementation of its decision. Petitioner's claim of title to said Lot 1-A should be served as third-party claim on the Deputy Sheriff who executed the Deed of Conveyance and caused the registration of the same, or vindicate, its claim to the property through a separate independent action (Sec. 17, Rule 39, Rules of Court. See Manila Herald Publishing Co., Inc. v. Ramos 88 Phils. 94,99)."

Petitioner now seeks a reversal of the decision of the Court of Appeals. It claims that the questioned orders of the respondent Judge were affected by extrinsic fraud because these were issued without notice to and without impleading petitioner as a party in Civil Case No. 35305.[14] Having been tainted with extrinsic fraud, petitioner can thus question them by filing the petition for annulment before the Court of Appeals and not only by filing a third party claim or a separate and independent action as held by the respondent Court.[15]

The principal question before Us is whether there was extrinsic fraud, as alleged by the petitioner, to justify the annulment of the questioned orders. The other issue raised refers to the statement of the Court of Appeals that "(p)etitioner's claim of title to said Lot 1-A should be served as a third-party claim on the Deputy Sheriff who executed the Deed of Conveyance and caused the registration of the same, or vindicate its claim to the property through a separate independent action. xxx."

We have held that although a person need not be a party to the judgment sought to be annulled; it is still essential that he prove his allegation that the judgment was obtained by the use of fraud and collusion and he would be adversely affected thereby.[16]

For fraud to serve as a basis of annulment of judgment, it must be extrinsic or collateral.[17] In *Macabingkil v. People's Homesite and Housing Corporation*,[18] extrinsic or collateral fraud has been explained to mean:

"where it is one the effect of which prevents a party from having a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but of the manner in which it was procured so that there is not a fair submission of the controversy.' In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent." (Emphasis in the original).[19]

Relief is granted on the theory that by reason of the extrinsic or collateral fraud preventing a party from having a trial or from fully trying his case, there has never been a real contest before the court of the subject matter of the action.[20]

Petitioner alleges, in support of its claim that extrinsic fraud affected the three orders in question, that the honorable judge had no jurisdiction to order the sheriff to levy on execution for he had full knowledge that the petitioner and not the judgment debtors owned the subject property;[21] that although the judgment had become final and executory a writ against the property of the petitioner was not justified because it was not a party to the case;[22] and that the honorable judge reinstated his earlier order for conveyance of the property subject of execution without notifying the petitioner.[23]

These allegations do not constitute extrinsic fraud.

The orders questioned by petitioner were issued to implement the execution of the judgment rendered in Civil Case No. 35305. The respondent Court already found that the orders were issued within the jurisdiction of the lower court and after a logical consideration of the evidence presented. When the respondent judge issued the order of December 18, 1990, reinstating its August 14, 1989 order designating Deputy Sheriff Estrellado to execute the deed of conveyance in favor of plaintiffs (herein private respondents), he already had the benefit of reviewing the report[24] and testimony of the Register of Deeds.[25]

Petitioner has not pointed to any act of the prevailing party preventing it from fully ventilating its case. If ever there was any failure in the presentation of its case, the same is caused not by private respondents but by its own inaction. Petitioner was not a party to the case before the lower court, and it did nothing to bring to the court's attention its problem. Hence, the lower court was not obligated to notify the petitioner of its orders.

Having been unable to prove that extrinsic fraud vitiated the orders in question, there lies no cause of action for annulment of said orders.

Respondent Court committed no error when it upheld the orders of the respondent judge and ruled:

"It will be recalled that the judgment in Civil Case No. 35305, which has become final and executory, ordered the defendants therein (Heirs of Emilio Gregorio, et. al.) to convey to Atty. Tomas Trinidad as honorarium for his services an area of 14,684 square meters, which is 20% of 72,424 square meters the total area of Lots 1,2,3 and 4; and to convey to Luis Fajardo an area of 29, 360 square meters representing 50% of the remainder of said property after deducting the honorarium of Atty. Trinidad.

The defendants Heirs of Emilio Gregorio not having complied with the judgment, in conformity with Section 10, Rule 39 of the Rules of Court, the respondent court directed its Deputy Sheriff to execute the deed of conveyance of the land as ordained in said judgment. Complying with said directive, the Deputy Sheriff in the person of Marcial L. Estrelado executed the Deed of Conveyance (xxx) of the adjudged areas in favor of Atty. Tomas Trinidad and Luis Fajardo of the land covered and embraced by TCT No. S-91911 (11278) of the Register of Deeds of Makati, Metro Manila and/or Pasay City, and/or Las Piñas Metro Manila, the description of said land having been reproduced hereinabove.

The Register of Deeds of Las Piñas having shown reluctance or unwillingness to annotate said Deed of

Conveyance on TCT No. S-91911, the respondent court has the authority and was acting within its jurisdiction to compel the Register of Deeds of Las Piñas to annotate the same on said TCT S-91911, which is still subsisting and has not been cancelled." [26]

The respondent Court also held:

"xxx. Petitioner's claim of title to said Lot 1-A should be served as third-party claim on the Deputy Sheriff who executed the Deed of Conveyance and caused the registration of the same, or vindicate its claim to the property through a separate independent action. (Sec. 17, Rule 39, Rules of Court; See Manila Herald Publishing Co. Inc. v. Ramos, 88 Phil 94,99)" (Italics supplied). [27]

The petitioner has raised the correctness of this statement by the respondent Court as another issue. However, since its resolution is inconsequential and would in no way alter the outcome of this petition, no further discussion on the matter shall be made.

WHEREFORE, the petition is dismissed for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Top Management Programs Corporation v. Hon. Apolonio R. Chavez and Tomas Trinidad, et. al., CA G.R. SP 26100; Penned by Justices Celso L. Magsino, Serafin E. Camilon, and Artemon D. Luna.

[2] Comment, p. 2; Rollo, p. 31.

[3] The Court of First Instance of Rizal, Branch II, acting on an application for registration of title (LRC Case No. 5053), awarded Lots 1,2,3 and 4 of PSU-204785 to Emilio Gregorio on January 31, 1966.

The same court, in LRC Case No. 5416, rendered judgment declaring Jose T. Velasquez as absolute owner of Lots 1,7,9 and 11 of plan Ap-11315 (Psu-56007- Amd) and Lots 7 and 9 of plan-5538 (Psu-50886) on March 30, 1966.

On September 16, 1966, the Land Registration Commission informed the court a quo that a portion of the land covered by plan Ap-11315 of Velasquez, or Lots 1, 7 and 11 of Plan AP-11315 (PSU-56007) is identical to Lots 1 to 4, Psu-204785 of Emilio Gregorio.

On November 23, 1966, the court awarded the lots in question to Velasquez and OCT 5678 to 5680 were issued in his favor.

Emilio Gregorio appealed this decision on January 7, 1967. Sometime after this, he entered into an agreement with the private respondents Tomas Trinidad and Luis Fajardo. (see text)

The land which is presently the subject matter of the instant case has a long and complicated history. The other details relating to it are not relevant for the instant petition and will not be given further attention.

Private Respondent's Memorandum, pp. 1-2; Rollo, pp. 81-82.

[4] Private Respondents Comment, p. 2; Rollo, p. 31.

[5] Decision of the Court of Appeals, pp. 1-2; Rollo, pp. 21-22.

[6] Ibid.

[7] Private Respondent's Memorandum, p. 8; Rollo, p. 88.

[8] Decision of CA, p. 3; Rollo, p. 23.

[9] Rollo, p. 88.

[10] CA-G.R. SP No. 26100; CA Records, p. 3.

[11] Decision of CA, p. 5; Rollo, p. 25.

[12] Dated December 18, 1990, May 28, 1991 and June 7, 1991.

[13] Supra, note 20.

[14] "Tomas Trinidad v. The Heirs of Emilio Gregorio."

[15] Petition, p. 6; Rollo, p. 7.

[16] Islamic Da'Wah Council of the Phils. v. CA, 178 SCRA 178, 186 (1989).

[17] Id.; Sanchez v. Tupas, 158 SCRA 459 (1988)

[18] 72 SCRA 326 (1976).

[19] Id., pp. 343-344; cited in Canlas v. CA, 164 SCRA 170 (1988) and Gerardo v. De la Peña, 192 SCRA 691 (1990).

[20] 37 Am. Jur. 2d, p. 25; Ruiz v. CA, 201 SCRA 583 (1991) citing Asian Security and Insurance Corp. v. Island Steel Inc., 118 SCRA 233 (1982).

[21] Petition, pp. 7-9; Rollo, pp. 8-10.

[22] Id., p. 10; Rollo, p. 11.

[23] Id., p. 11; Rollo, p. 12.

[24] Submitted February 5, 1990.

[25] Decision of CA, p. 6; Rollo, p. 26; Order dated December 18, 1990; CA Records, p. 32.

[26] Id., pp. 5-6; Rollo, pp. 25-26.

[27] Id., p. 6.

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