

SPOUSES VICTOR WARLITO V. YBAÑEZ AND VIRGINIA A. YBAÑEZ, REPRESENTED BY THEIR ATTORNEY-IN-FACT, FORTUNATO V. YBAÑEZ, PETITIONERS, VS. COURT OF APPEALS; REGIONAL TRIAL COURT OF RI...

G.R. No. 117499. February 09, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is the factual background.

In December 1984, petitioners spouses Victor Warlito V. Ybañez and Virginia A. Ybañez, as vendors, entered into a Deed of Sale With Assumption of Mortgage and With Right of Purchase over a mortgaged 400 sq. m. parcel of land in favor of private respondents spouses Avelino P. Ifurung and Virginia F. Ifurung, as vendees. The deed of sale has, among others, the following salient terms: (1) private respondents shall pay the sum of P118,000.00 to the petitioners and assume the obligations under the Deed of Mortgage of the subject property with the Development Bank of the Philippines (DBP); (2) petitioners shall have the right to repurchase the property within three months from the date of the sale; (3) failure on the part of petitioners to repurchase within the agreed period will cause the transfer of the property to private respondents without reservation, and petitioners will vacate the subject property and surrender possession thereof in favor of private respondents.[1] To enable the private respondents to pay the monthly amortizations to the DBP, petitioners executed a power of attorney for the purpose, which was subsequently revoked by them.

The agreed three-month period expired without petitioners exercising their right to repurchase the subject property. Private respondents, through counsel, demanded that petitioners surrender the possession of the subject property and vacate the premises in accordance with the deed of sale, only to be unheeded. Thus, in 1992, private respondents filed an ejectment suit against petitioners before the Metropolitan Trial Court (MTC) docketed as Civil Case No. 2751. Summons were issued and served by substituted service "thru Engr. and Mrs. Nomer Ybañez (brother of Mr. Victor Warlito V. Ibalez [sic])"[3]. As a result of petitioners' failure to file an answer, the MTC, in accordance with Section 6 of the Revised Rules on Summary Procedure, *motu proprio* rendered judgment in favor of private respondents ordering petitioners "to deliver possession and vacate the premises in question [and] to pay x x x the amount[s] of P5,000.00 for and as attorney's fees, x x x P309,000.00 as reasonable rent at P3,000.00 per month starting March, 1984 until September 1992, x x x [and] to pay the costs." [4]

Petitioners appealed before the Regional Trial Court (RTC) of Pasig, Branch 154, docketed as SCA No. 253, and premised the same on the alleged lack of valid service of summons over their persons. They asserted that service of summons to Engr. and Mrs. Nomer Ybañez is improper and invalid since petitioners, as early as 1988, have left for abroad, although it is uncontroverted that the latter spouses (Engr. and Mrs. Nomer Ybañez) were found residing at petitioners' last known address. The appeal did not prosper. Finding the substituted service of summons proper and valid, the RTC affirmed the MTC decision, but modified the amount of reasonable rentals to

"P3,000.00 a month beginning September 13, 1991 with legal interest of 6% per annum until defendants [petitioners herein] actually vacate the premises." [5] Petitioners thereafter filed a notice of appeal signifying their intention to appeal the judgment to the Court of Appeals which was denied due course by the RTC on the ground that it is not the proper remedy [6]-- the correct recourse being the filing of a petition for review. [7] On March 31, 1993, petitioners filed a motion for new trial before the RTC. In an Order dated March 11, 1994, the RTC denied the motion for having been filed beyond the reglementary period, among others. [8] With the denial of private respondents' motion and the decision having attained finality, the RTC in SCA No. 253 issued a writ of execution dated March 22, 1994, and subsequently caused the entry of the judgment through an Order dated September 1, 1994.

In a bid to nullify the deed of sale, petitioners commenced an action for Cancellation of Deed of Sale With Assumption of Mortgage and With Right of Repurchase With Damages, before RTC Branch 156, docketed as Civil Case No. 64437. [9] On September 16, 1994, RTC Branch 156 dismissed for lack of merit petitioners' complaint for cancellation of the deed of sale. This dismissal is now pending appeal before the Court of Appeals.

Apparently, in a desperate move, on May 2, 1994, petitioners filed another action - a petition for annulment of judgment of the RTC in SCA No. 253 before respondent Court of Appeals, [10] now the subject of this petition. Petitioners assailed the validity of the substituted service of summons over their persons in the MTC ejectment case, an issue well settled in their appeal before the RTC. Likewise, petitioners attacked the RTC jurisdiction to modify and affirm on appeal the MTC decision and further contended that "private respondents obtained the judgment by default against the petitioners by means of extrinsic fraud" [11] Respondent court reversed the RTC in so far as the validity of the substituted service of summons is concerned and ruled that there was an improper substituted service of summons upon petitioners. However, respondent court stressed that the RTC's decision is not void since, by asking for affirmative relief through their appeal and motion for new trial before the RTC, petitioners were effectively barred from questioning the validity of the substituted service of summons, as well as the RTC's jurisdiction over their persons. On the issue of extrinsic fraud, respondent court ruled that there was no extrinsic fraud to warrant the annulment of the MTC and RTC judgments. Dissatisfied, but without filing a motion for reconsideration for no apparent reason, petitioners filed the instant petition stressing that "[t]his is a petition for certiorari, both under Rule 65 and Rule 45, Rules of Court" [12] raising substantially the following issues: (1) whether or not the substituted service of summons over the persons of the petitioners in the ejectment case was valid to vest the MTC jurisdiction over their persons, and (2) whether or not the judgments of the MTC in the ejectment suit and of the RTC on appeal were obtained by means of extrinsic fraud to warrant their nullification. [13]

At the outset, we note that petitioners immediately filed this petition without even filing a motion for reconsideration of the assailed decision thereby depriving respondent court of the opportunity to correct at the first instance an error which it may have committed. We see no cogent reason and none was persuasively presented to excuse petitioners from their failure to file a motion for reconsideration. Also glaring is the ambivalent, if not irresolute, posture taken by the petitioners by categorizing this petition to be "both under Rule 65 and Rule 45, Rules of Court" [14] in an attempt, apparently, to evade the dismissal of the petition based on a wrong mode of appeal in accordance with Circular No. 2-90 issued on March 9, 1990. The court cannot tolerate this practice much less the seeming ignorance of the law on appeals. This petition cannot be subsumed simultaneously under Rule 45 and Rule 65 of the Rules of Court, and neither may petitioners delegate upon the court the task of determining under which rule the petition should fall. Under Circular No. 2-90, wrong or inappropriate mode of appeal, as in this case, merits an outright dismissal. In fact, paragraph 4 (e) of the circular specifically warns litigants' counsels by providing the following:

"Duty of counsel. - It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause."

The disposition of this case could have stopped here without further ado, but nevertheless we will briefly deal with the assigned issues for while the respondent court correctly dismissed the action for annulment of judgment, its reversal of the RTC ruling on the issue of substituted service of summons is misplaced.

On the first issue, we feel that respondent court acted inadvertently when it set aside the RTC ruling relative to the validity of the substituted service of summons over the persons of the petitioners in the MTC level. We must not lose sight of the fact that what was filed before respondent court is an action to annul the RTC judgment and not a petition for review. Annulment of judgment may either be based on the ground that a judgment is void for want of jurisdiction^[15] or that the judgment was obtained by extrinsic fraud.^[16] There is nothing in the records that could cogently show that the RTC lacked jurisdiction. Chiefly, Section 22 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, vests upon the RTC the exercise of an "appellate jurisdiction over all cases decided by the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions."^[17] Clearly then, when the RTC took cognizance of petitioners' appeal from the adverse decision of the MTC in the ejectment suit, it (RTC) was unquestionably exercising its appellate jurisdiction as mandated by law. Perforce, its decision may not be annulled on the basis of lack of jurisdiction as it has, beyond cavil, jurisdiction to decide the appeal.

Corollarily, it is inappropriate for respondent court to reverse the RTC ruling that there was proper and valid substituted service of summons over the persons of the petitioners. Petitioners properly assigned this issue and, in fact, it was exhaustively argued in their appeal, albeit without success. They subsequently failed to seasonably question the soundness of the RTC ruling before respondent court via a petition for review. As it stands, therefore, the ruling of the RTC that substituted service of summons was validly effected has long acquired finality. Raising this long settled issue in the annulment case could very well be petitioners' device and technique to acquire a fresh opportunity to assail this ruling, a chance they already lost because of their failure to seasonably file a petition for review. This scheme is highly irregular and may as well constitute misuse of court processes.^[18] In addition, it stultifies and renders asunder the principle, well embedded in our jurisprudence, that a judgment properly rendered by a court vested with jurisdiction, like the RTC, and which has acquired finality becomes immutable and unalterable, hence, may no longer be modified in any respect except only to correct clerical errors or mistakes.^[19] Judgments of courts become final at some definite time fixed by law and that parties, like the petitioners, should not be permitted to litigate the same issue/s over again.

Moreover, a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the effect of a valid judgment. Section 49 (b) and (c), Rule 39 of the Rules of Court states:

"SEC. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

xxx xxx xxx

(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors-in-interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

These provisions embody the same rule that once a judgment has become final and executory, the issues therein should be laid to rest. Paragraph (b) is referred to as "bar by former judgment." It is a concept in which the term *res judicata* is more commonly and generally used and has the following concurring requisites, namely: (1) the former judgment or order must be final; (2) it must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and second actions, identity of parties, of subject matter and of cause of action.

Paragraph (c) is the less familiar concept or less terminological usage of *res judicata* known as "conclusiveness of judgment." This concept, which applies in this case, refers to a situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined or necessarily included therein. Otherwise stated, "conclusiveness of judgment" precludes relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.^[20] With the validity of the substituted service of summons having been settled in the RTC and having long acquired finality, petitioners are now precluded to relitigate the same issue. Litigation must have and always has an end. If not, judicial function will lose its relevance.

With respect to the second issue, we agree with respondent court's succinct disposition that the MTC judgment was not obtained by extrinsic fraud to warrant annulment. Respondent court amply explained extrinsic fraud and applied the same in this wise:

"The kind of fraud that justifies the annulment of a judgment is extrinsic fraud. This refers to some act or conduct of the prevailing party which has prevented the aggrieved party from having a trial or presenting his case to the court, or was used to procure judgment without a fair submission of the controversy. Extrinsic fraud refers to acts outside the trial. It must be distinguished from intrinsic fraud which refers to acts of a party at a trial which prevented a fair and just determination of the case and which could have been litigated and determined at the trial or adjudication of the case. Examples of intrinsic fraud are falsification and false testimony.

"The petitioners argued that the private respondents committed extrinsic fraud when they did not inform the trial court that they (private respondents) have not assumed the mortgage of the property in question. Applying the definition stated earlier, the fraud supposed to have been committed does not amount to extrinsic fraud. The omission was done within the trial or the litigation process, particularly in the complaint for ejectment filed before the Metropolitan Trial Court. If such omission were fraudulent, it would have constituted intrinsic fraud which could have been determined in the adjudication of the case. As such, even if it were proven, the supposed fraud does not justify the annulment of the judgment."^[21]

Similarly, the RTC decision in SCA No. 253 was not attended by extrinsic fraud. We find nothing, either act or conduct on the part of private respondents, that may have prevented petitioners from presenting their case to the court. Indeed, the record is bereft of any iota of evidence that could show the contrary.

WHEREFORE, save for some modifications in respondent court's findings which, nonetheless, did not alter the final outcome of the case, the petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Rollo, pp. 81-83..

[2] Revocation of Power of Attorney, October 28, 1992; Rollo, p. 138.

[3] Sheriff' s Return, September 21, 1992, p.1; Rollo, p. 34.

[4] MTC Decision, Civil Case No. 2751, October 21, 1992; Rollo p. 43.

[5] RTC Br. 154 Decision, SCA No. 253, p. 7; Rollo, p. 50.

[6] RTC Br. 154 Order, March 12, 1993.

[7] CA Decision p. 27, citing RTC Order; See also Circular No. 2-90, par. 3 (b).

[8] RTC Br. 154 Order, Rollo, pp. 51-54.

[9] The record is silent as to the exact date of the filing of this action.

[10] Special Seventh Division, Martinez, A.M., J., Chairman; Martin Jr., F.A., and Vasquez, Jr., C.M., JJ., members.

[11] CA Decision, at p. 5; Rollo, p. 29.

[12] Petition, p. 2; Rollo, p. 5.

[13] Petition, pp. 7-11, Rollo, pp. 10-14.

[14] Id.

[15] Laxamana vs. Court of Appeals, 87 SCRA 48, 56(1978); Panlilio vs. Garcia, 119 SCRA 387, 391 (1982).

[16] Id.

[17] See also Resolution E(21), Resolution of the Supreme Court En Banc, dated January 11, 1983, Providing for the Interim or Transitional Rules and Guidelines Relative to the Implementation of the Judiciary Reorganization Act.

[18] Proscribed under Canon 12, Rule 12.04, Code of Professional Responsibility.

[19] Lim v. Jabalde, 172 SCRA 211, 223 (1989); Adez Realty, Inc V. Court of Appeals, 212 SCRA 623,627(1992).

[20] Filinvest Credit Corp. v. Intermediate Appellate Court, 207 SCRA 59,63 (1992); Lopez v. Reyes, 76 SCRA 179, 186(1977).

[21] CA Decision, p. 8; Rollo, p. 32.

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