

**LAPULAPU DEVELOPMENT & HOUSING CORPORATION,
PETITIONER, VS. JUDGE TEODORO K. RISOS OF RTC, BRANCH 27,
LAPU LAPU CITY; GROUP MANAGEMENT CORP. AND GOVERNMENT
SERVICE INSURANCE SYS...**

G.R. No. 118633. September 06, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

This petition, filed under Rule 65 of the Revised Rules of Court on February 2, 1995, seeks to annul and set aside the February 24, 1992 Decision of respondent Judge Teodoro K. Risos of Branch 27, Regional Trial Court of Lapulapu City, in Civil Case No. 2203-L, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering defendant [Government Service Insurance System in this petition] to:

1. Execute the final deed of absolute sale and deliver the seventy-eight (78) certificates of title covering said seventy-eight (78) parcels of land to the plaintiff [Group Management Corporation in this petition];
2. Pay plaintiff actual damages, plus attorney's fees and expenses of litigation, in the amount of P285,638.88, and P100,000.00 exemplary damages;
3. Dismissing in toto intervenor's [Lapulapu Development & Housing Corporation in this petition] complaint-in-intervention for lack of evidence of legal standing and legal interest in the suit, as well as failure to substantiate any cause of action against either plaintiff or defendant.

SO ORDERED."[1]

Established are the following facts:

On February 4, 1974, petitioner Lapulapu Development and Housing Corporation (LLDHC for short), then known as B. Sunga Corporation, entered into a Project and Loan Agreement with respondent Government Service Insurance System (GSIS for short) whereby the latter undertook to extend a loan of P25 million to petitioner to be used by LLDHC in developing, subdividing and selling to GSIS members, 423,177 square meters of land, located at Barrio Marigondon, Lapulapu City, owned by LLDHC. To implement the agreement, GSIS extended to petitioner an ad interim medium term loan of P2,500,000.00 of which the initial amount of P710,400.00 was released. To secure payment of the loan, petitioner executed a promissory note and a real estate mortgage on the aforesaid seventy-eight (78) transfer certificates of title.

Due to the failure of petitioner to develop the mortgaged properties and to pay the loan, the GSIS foreclosed the mortgaged properties. Being the lone bidder in the public auction sale, the GSIS acquired the real properties and subsequently consolidated its title thereto with the issuance of new transfer certificates of title in its name.

On April 23, 1980, petitioner LLDHC filed a complaint for Annulment of Foreclosure with Writ of Mandatory

Injunction[2] against the GSIS before the then Court of First Instance of Manila which was originally docketed as Civil Case No. 131332, but later renumbered as Civil Case No. R-82-3429 (Reconstructed), and raffled out to Branch 38 of the Regional Trial Court of Manila.

Before the said complaint by LLDHC was filed, however, the GSIS, as new owner of the real properties, had executed on February 26, 1980 a Deed of Conditional Sale[3] over the same properties in favor of private respondent Group Management Corporation (GMC for short).

While Civil Case No. R-82-3429 for annulment of foreclosure was still pending before Branch 38, RTC of Manila, private respondent GMC, on November 3, 1989, filed a complaint for Specific Performance With Damages against the GSIS, docketed as Civil Case No. 2203-L, which was raffled out to Branch 27, Regional Trial Court of Cebu, Lapulapu City presided over by public respondent Judge Teodoro K. Risos. The complaint seeks to compel GSIS to execute a Final Deed of Absolute Sale in favor of GMC over the subject properties, the full purchase price thereof having been paid by GMC to the GSIS.

On December 7, 1989, petitioner LLDHC, as intervenor, filed a Motion to Dismiss Civil Case No. 2203-L before the RTC of Lapulapu. Judge Risos denied the said motion on June 8, 1990 and proceeded to hear Civil Case No. 2203-L, with LLDHC participating as intervenor.

On February 24, 1992, after a full-blown trial, Judge Risos rendered judgment in Civil Case No. 2203-L in favor of private respondent GMC, which judgment is now the subject of this petition for certiorari. The decretal portion of the decision provides, viz:

"WHEREFORE, judgment is hereby rendered ordering defendant [GSIS in this petition] to:

1. Execute the final deed of absolute sale and deliver the seventy-eight (78) certificates of title covering said seventy-eight (78) parcels of land to the plaintiff [GMC in this petition];
2. Pay plaintiff actual damages, plus attorney's fees and expenses of litigation, in the amount of P285,638.88, and P100,000.00 exemplary damages;
3. Dismissing in toto intervenor's [LLDHC in this petition] complaint-in-intervention for lack of evidence of legal standing and legal interest in the suit, as well as failure to substantiate any cause of action against either plaintiff or defendant.

SO ORDERED."[4]

Under dates March 11, 1992 and March 20, 1992, petitioner-intervenor LLDHC and private respondent-defendant GSIS both appealed therefrom.

On December 6, 1993 both appeals were dismissed by the respondent court.

On May 10, 1994, Branch 38, RTC of Manila presided over by Judge Arturo Barlas, Jr. rendered judgment in Civil Case No. R-82-3429, in favor of petitioner LLDHC and against GSIS.

On this basis, LLDHC filed on July 27, 1994 in the Court of Appeals a Petition for Annulment of Judgment,[5] docketed as C.A.-G.R. SP No. 34696, of the decision rendered by Judge Risos on February 24, 1992 in Civil Case No. 2203-L.

The Ninth Division of the Court of Appeals dismissed the petition in its decision, dated December 29, 1994,[6] for failure of the petitioner LLDHC to show that respondent court is without jurisdiction over the subject matter and the parties in Civil Case No. 2203-L, to wit:

"x x x x x x x x x x

In fine, there being no showing from the allegations of the petition that the respondent court is without jurisdiction over the subject matter and of the parties in Civil Case No. 2309 [2203-L], petitioner has no cause of action for the annulment of judgment. The complaint must allege ultimate facts for the annulment of the decision (*Avendana v. Bautista*, 142 SCRA 39). We find none in this case.

WHEREFORE, the Petition is hereby DISMISSED [Underscoring supplied]."[7]

On January 28, 1995, no appeal having been seasonably interposed by the petitioner, this decision of the Court of Appeals became final and executory, judgment having been entered on August 18, 1995.[8]

In a last ditch attempt to Annul the February 24, 1992 Decision of the respondent court, this petition was brought before us on February 2, 1995.

Dismissal of this petition is inevitable.

The instant petition which is captioned, For: Certiorari With Preliminary Injunction, is actually another Petition for Annulment of Judgment of the February 24, 1992 Decision of the respondent Regional Trial Court of Lapulapu City, Branch 27 in Civil Case No. 2203-L. A close perusal of this petition as well as the Petition for Annulment of Judgment brought by the petitioner before the Court of Appeals in CA-G.R. No. SP No. 34696[9] reveals that the instant petition is a mere reproduction of the petition/complaint filed before the appellate tribunal for annulment of judgment. Paragraphs two (2) to eighteen (18) of this petition were copied verbatim from the Petition for Annulment of Judgment earlier filed in the court a quo, except for the designation of the parties thereto, i.e., plaintiff was changed to petitioner, defendant to respondent. In fact, even the prayer in this petition is the same prayer in the Petition for Annulment of Judgment dismissed[10] by the Court of Appeals, to wit:

"1. That Restraining Order/Writ of Preliminary Injunction issue commanding the Respondent to cease and desist from enforcing the judgment of Respondent Judge Teodoro K. Risos in Civil Case No. 2203-L dated February 24, 1992 and all orders and processes pertaining to his decision in the said case.

2. Annulling the decision of defendant Judge Teodoro K. Risos of RTC of Cebu, Branch 27, in Civil Case No. 2203-L.

3. Granting Petitioner such other relief as law and justice may warrant in this case."[11]

Under Section 9(2) of *Batas Pambansa Blg. 129*, otherwise known as "The Judiciary Reorganization Act of 1980," it is the Court of Appeals (then the Intermediate Appellate Court), and not this Court, which has Jurisdiction to annul judgments of Regional Trial Courts, viz:

"SEC. 9. Jurisdiction - The Intermediate Appellate Court shall exercise:

x x x x x x x x

(2) Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and

x x x x x x x x"

Thus, this Court apparently has no Jurisdiction to entertain a petition which is evidently another petition to annul the February 24, 1992 Decision of the respondent Branch 27, Regional Trial Court of Lapulapu City, it appearing that jurisdiction thereto properly pertains to the Court of Appeals. Such a petition was brought before the appellate court, but due to petitioner's failure to nullify Judge Risos' Decision in said forum, LLDHC, apparently at a loss as to what legal remedy to take, brought the instant petition under the guise of a petition for certiorari under Rule 65 seeking once again to annul the judgment of Branch 27.

Instead of filing this petition for certiorari under Rule 65, which is essentially another Petition to Annul Judgment, petitioner LLDHC should have filed a timely Petition for Review under Rule 45 of the Revised Rules of Court of

the decision of the Court of Appeals, dated December 29, 1994, dismissing the Petition for Annulment of Judgment filed by the petitioner LLDHC before the court a quo. But, this is all academic now. The appellate court's decision had become final and executory on January 28, 1995.

Nevertheless, it is worthwhile to mention that this petition, which is truly for annulment of judgment, cannot prosper on its merits. It has been settled that a judgment can be annulled only on two (2) grounds: (a) that the judgment is void for want of jurisdiction or lack of due process of law; or (b) that it has been obtained by fraud.[12]

Neither of these grounds obtain in the case at bench. In regard to the question of whether or not the respondent court had jurisdiction over Civil Case No. 2203-L, the Court of Appeals correctly ruled that:

"There is, thus, no question that respondent Judge has jurisdiction both over the subject matter and nature of the action in Civil Case No. 2203-L. The action before respondent Judge is for specific performance with damages. It is an action that is not capable of pecuniary estimation which falls under the original and exclusive jurisdiction of Regional Trial Court (Section 19 (1) BP 129).[13] The Court, has, likewise, acquired jurisdiction over the persons of the defendants. GSIS filed an answer while petitioner herein intervened and invoked the court's jurisdiction by filing a motion to dismiss on the ground of improper venue, lis pendens and laches. The jurisdiction of the respondent was never challenged.

The settled doctrine is if the court has jurisdiction over the subject matter and the person of the parties, its ruling upon all questions involved are mere errors of judgment which are reviewable by appeal (Herrera v. Barretto, 25 Phil. 245; Arcaya v. Teleran, 57 SCRA 363)."[14]

It cannot likewise be successfully argued that there was lack of due process in the proceedings before Branch 27 of the RTC of Lapulapu. Petitioner had ample participation in Civil Case No. 2203-L as intervenor, as it in fact filed a Motion to Dismiss said case on December 7, 1989 which was, however, denied by respondent Judge. Thereafter, a full-blown trial was held which culminated in the subject decision sought to be annulled by the petitioner.

In the same manner, the February 24, 1992 decision of respondent court cannot be assailed on the ground of fraud. In order for fraud to serve as a basis for the annulment of judgment, it must be extrinsic or collateral in character, otherwise there would be no end to litigations. Extrinsic fraud refers to any fraudulent act of the prevailing party which is committed outside of the trial of the case, whereby the defeated party [petitioner herein] has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent.[15] This type of fraud is decidedly absent in the case at bench. Petitioner has not pointed to any act of the prevailing party (Group Management Corporation) preventing it (petitioner) from fully ventilating its case as intervenor in Civil Case No. 2203-L. If ever the petitioner's complaint-in-intervention did not prosper in said case, it was because the lower court, after due hearing, did not find the intervenor's case meritorious, and not because petitioner was unduly deprived of its day in court. Thus, having been unable to prove that extrinsic fraud vitiated the orders in question, there lies no cause of action for annulment of said orders.

Granting ex gratia argumenti that this petition, indeed, should be given due course as a petition for certiorari under Rule 65 of the Revised Rules of Court, the same would still be dismissible for not being brought within a reasonable period of time. It is true that Rule 65 does not specify any period within which a petition for certiorari should be filed. However, we have consistently ruled that a pleading filed under Rule 65 should be within a reasonable period of time. The definitive rule now is that the special civil action for certiorari should not be instituted beyond a period of three (3) months,[16] taking into account the duration of time that had expired from the commission of the acts complained of up to the institution of the proceedings to annul the same.[17] In the case before us, the instant petition, dated January 24, 1995, was filed in this Court on February 2, 1995. The

decision which is being assailed was rendered on February 24, 1992, and petitioner received a copy of said decision on March 3, 1992.[18] Thus, it took petitioner almost three (3) long years before it finally decided to bring this petition for certiorari under Rule 65. Based on settled case law, this is, beyond any shadow of doubt, filed out of time.

WHEREFORE, premises considered, the instant petition is hereby DISMISSED.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 116.

[2] Entitled Lapulapu Development and Housing Corporation, Plaintiff versus Government Service Insurance System, Register of Deeds of Lapulapu City, and Provincial Sheriff of Cebu, Defendants.

[3] Annex B; Rollo, pp.29-36.

[4] Supra.

[5] Erroneously captioned "Complaint."

[6] Penned by Justice Oscar M. Herrera.

[7] Rollo, p.191.

[8] Rollo, p.265.

[9] Rollo, pp.163-171.

[10] Except paragraphs three (3) and four (4) of the Prayer in Petition for Annulment of Judgment which were not reiterated in this petition.

[11] Petition, p.9; Rollo, p.11.

[12] Santos v. Court of Appeals, 224 SCRA 673, 680 [1993], citing Ruiz v. Court of Appeals, 201 SCRA 577 [1991]; Regidor v. Court of Appeals, 219 SCRA 530, 534 [1993].

[13] As amended by Republic Act No. 7691.

[14] Rollo, pp.189-190.

[15] Supra., Note 12 at 681, citing Gerardo v. De la Peña, 192 SCRA 691, [1991].

[16] Paderanga v. Court of Appeals, 247 SCRA 741, 759 [1995], citing Caramol vs. National Labor Relations Commission, et al., G.R. No. 102973, August 24, 1993, 225 SCRA 582, citing Philec Worker's Union vs. Young, G.R. No. 101734, January 22, 1992, Minute Resolution, First Division; Catalina Bermejo vs. National Labor Relations Commission, et al., G.R. No. 102713, January 20, 1992, Minute Resolution, First Division.

[17] Ibid., citing Fernandez v. National Labor Relations Commission, 230 SCRA 460 [1994].

[18] Rollo, p.117.

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