

NATIVIDAD T. TANGALIN, PETITIONER, VS. COURT OF APPEALS, DR. RAMON L. COCSON, JOSEFINA G. COCSON, EDITHA G. TIGLAO, FE F. GOMEZ, AND ATTY. PEDRO F. MARTINEZ, RESPONDENTS.

G.R. No. 121703. November 29, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

In this petition for certiorari,[1] petitioner seeks to annul the Decision[2] of the Court of Appeals as well as its resolution[3] denying reconsideration.

The Facts

The facts, as found by the Court of Appeals, are as follows:

"On March 5, 1970, the spouses Dr. Ramon L. Cocson and Josefina G. Cocson (spouses Cocson, for brevity) obtained a P3,200.00 loan from Atty. Pedro Martinez, to finance their children's college studies. To secure payment of said loan, the spouses Cocson executed in favor of Atty. Martinez a Contract of Mortgage and Promissory Note, dated March 5, 1970, over their two parcels of land, as follows:

"1. a parcel of unirrigated rice land declared in the name Ramon Cocson with an area of 6,336 sq. meters assessed at P316.00, bounded on the North by Pedro Florendo; on the West by Barrio Road; on the East by a ditch; on the South by Pedro Florendo, covered by Tax Declaration No. 29245.

"2. a residential lot declared in the name of Josefina G. Cocson with an area of 391.75 sq. meters more or less assessed at P540.00 bounded on the North (sic) Leona A. Cacdac, et al.; on the West by Calle Aglipay; on the East by Fely Gomez; on the South by Edita Tiglao; covered by Tax Declaration No. 28471.

"The spouses defaulted in the payment of their mortgage obligation. Atty. Martinez caused the extra-judicial foreclosure of the mortgaged properties and was the only bidder for P8,359.75 at the public auction conducted on December 10, 1971. The Provincial Sheriff Ex-Oficio of La Union, Alfredo A. Talavera, issued the corresponding Certificate of Sale which was duly registered under Entry No. 74716 and Inscription No. 74519 on January 28, 1972.

"No redemption was made within the reglementary period. On December 10, 1975, Sheriff Talavera issued the Certificate of Absolute Definitive Sale over the aforesaid properties in favor of Atty. Martinez.

"On January 22, 1972, the spouses Cocson executed a Deed of Absolute Sale covering (sic) parcels of land, different from the subject of the foreclosure proceedings, and which Atty. Martinez registered with the Register of Deeds of La Union. On the basis thereof, Tax Declarations Nos. 39220 and 39221 were issued in his name.

"On September 9, 1975, Atty. Martinez sold to Natividad T. Tangalin the property covered by Tax Declaration No. 39220, evidenced by a Deed of Absolute Sale of Real Estate.

"On September 29, 1975, the spouses Cocson filed the complaint for annulment of sales plus damages with writ of preliminary injunction against Atty. Pedro Martinez and the spouses Mario Go and Natividad T. Tangalin.

"On October 13, 1975, the spouses Mario Go and Natividad T. Tangalin filed their Answer with Cross Claim against Atty. Pedro Martinez, claiming that they bought the property from Pedro Martinez in good faith and were not aware of any defect in the ownership of Atty. Martinez over said property.

"Atty. Martinez filed his Answer, first on October 28, 1975, and another on December 8, 1975.

"On June 1, 1976, the spouses Cocson filed an Amended Complaint attached to an Urgent Motion to Admit the same which included, as additional defendants, Alfredo A. Talavera and Emilio Lacsamana, the Provincial Sheriff Ex-Oficio and Deputy Provincial Sheriff of La Union, respectively. The amended complaint was admitted per Order, dated March 23, 1976.

"On July 22, 1988, the court a quo rendered the assailed decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

"1. (a) The Contract of Mortgage and Promissory Note is declared valid; and

"(b) Ordering the Cocsons to pay the remaining unpaid balance of P1,900.00 plus penalty in accordance with the stipulation in the Mortgage Contract and Promissory Note and to pay the legal rate of interest in accordance with this decision.

"2. Declaring the Extra-judicial Foreclosure of Mortgaged real property irregular, and, therefore, the Certificate of Sale of Mortgage Real Estate Properties dated December 11, 1971 signed by Cariaso and the Certificate of Absolute Definitive Deed of Sale dated November 10, 1975 signed by Sheriff Alfredo Talavera are declared null and void.

xxx xxx xxx

"3. (a) Declaring the Deed of Sale dated January 22, 1972 null and void. However, considering that one of the properties subject of said sale was acquired under a Deed of Sale dated September 9, 1975 by Natividad T. Tangalin who is a 'bona fide' purchaser and for value, the latter sale should be respected; and

"(b) Ordering the Cocsons to deliver the possession of the land previously declared under Tax Declaration No. 284-72 in the name of Editha Tiglao to Natividad T. Tangalin. And if the land is in the possession of Editha the latter shall deliver the possession thereof to Natividad T. Tangalin.

"4. Ordering the plaintiffs Cocsons to refund to Pedro F. Martinez and Natividad T. Tangalin attorney's fees and expenses of litigation in the amount of P5,000 each.

"5. Ordering plaintiffs Cocsons to refund to Pedro Martinez the sum of P3,277.87 which is one-half (1/2) of the purchase price corresponding to the land belonging to Fe Gomez, the land being in their possession, and to pay interest as stated earlier in this decision.

"6. With pronouncement as to costs against the plaintiffs Cocsons.

"SO ORDERED." [4]

In time, both the spouses Cocson and Atty. Martinez filed separate notices of appeal.[5] However, for failure of the spouses Cocson to pay the docket fee within the reglementary period, the Court of Appeals dismissed their appeal.[6]

On November 18, 1992, the Clerk of Court, Court of Appeals, made a partial entry of judgment[7] and certified that the resolution dismissing the appeal of the spouses Cocson for non-payment of docket fee had become final and executory on October 10, 1991.

On November 12, 1993, spouses Cocson filed with the Court of Appeals a "Very Urgent Ex-Parte Motion to Set Aside Entry of Judgment, etc." [8] On December 2, 1993, the Court of Appeals denied the motion. On June 6, 1994, the spouses Cocson filed another motion for reconsideration,[9] however, on July 29, 1994, the Court of Appeals again denied the motion.[10]

On July 31, 1995, the Court of Appeals promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, the appealed decision is AFFIRMED, with MODIFICATION as follows:

"1. Declaring as valid the Contract of Mortgage and Promissory Note;

"2. Ordering the spouses Cocson to pay Atty. Pedro Martinez the remaining unpaid balance of P1,900.00, plus penalty as stipulated in the Mortgage Contract and Promissory Note and to pay the legal interest from date of this decision until fully paid;

"3. Declaring the Extra-judicial Foreclosure of Mortgaged real property irregular and, therefore, the Certificate of Sale of Mortgage Real Estate Properties dated December 11, 1971, signed by Cariaso and the Certificate of Absolute and Definitive Deed of Sale, dated November 10, 1975, signed by Sheriff Alfredo Talavera are hereby declared null and void;

"4. The rest of the appealed decision is reversed and set aside, declaring the Deed of Sale dated January 22, 1972, null and void. Consequently, the Deed of Sale, dated September 9, 1975, executed by Atty. Pedro Martinez in favor of Natividad T. Tangalin, is likewise declared null and void. Atty. Martinez is ordered to return to Natividad T. Tangalin the consideration he received therefrom with legal interest from date of the appealed decision until fully paid. The spouses Cocson are likewise directed to return to Atty. Martinez the consideration they received under the Deed of Absolute Sale, dated January 22, 1972, with legal interest from date of the appealed decision until fully paid.

"SO ORDERED." [11]

On August 19, 1995, spouses Cocson filed a motion for reconsideration.[12] However, on September 7, 1995, the Court of Appeals denied the motion.[13]

Hence, this petition.[14]

The Issue

The issue is whether the Court of Appeals erred in reversing or modifying the portion of the trial court's decision that has become final and executory as to petitioner.

The Court's Ruling

We find the petition without merit.

Normally, a party cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter-assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof for in such a case he must appeal. A party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal.[15] However, the appellate court may consider errors, although unassigned, if they involve (1) errors affecting the lower court's jurisdiction over the subject matter, (2)

plain errors not specified, and (3) clerical errors.[16]

In the case at bar, it was plain error for the trial court to rule that the sale dated January 22, 1972 was void and at the same time state that the sale of September 9, 1975, that involved the same parcel of land be respected.

It is indisputable that the spouses Cocson did not own the property covered by Tax Declarations Nos. 28472 and 29310 Cocson on January 22, 1972. Both the trial court and the Court of Appeals are in agreement with this finding of fact.

The trial court found that:

"Since Editha G. Tiglao and Fe Gomez, not Josefina Cocson, are the owners of the properties covered by Tax Declarations No. 28472 and 29310 subject of the deed of sale (Exh. 8 - Cocson and Exh. 2 - Martinez) then the latter (Josefina) conveys no rights, interests and title over the said properties to Martinez under the deed of sale." [17]

Likewise, the Court of Appeals found that:

"There is no clear and convincing proof on record to show that the property sold by spouses Cocson to Atty. Martinez was in actuality their property and no longer the property of Editha and Fe. The fact is, even at the time of the execution of the Deed of Sale, the said property was still covered by Tax Declarations Nos. 28472 and 29310 in the names of Editha and Fe, respectively." [18]

Consequently, the sale dated January 22, 1972 of the property by the spouses Cocson to Atty. Martinez was null and void. And the sale on September 9, 1975 executed by Atty. Martinez in favor of petitioner cannot be valid as the ownership of the property was not validly transferred to Atty. Martinez in the previous sale.

By a contract of sale, one of the contracting parties, the vendor, obligates himself to transfer the ownership and to deliver a determinate thing, and the other, the vendee, to pay therefor a price certain in money or its equivalent.[19] Atty. Martinez could not convey ownership of the property to petitioner Natividad T. Tangalin as he did not own the same.

It is a well-settled principle that no one can give what one does not have - *nemo dat quod non habet*. Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally.[20]

It may be recalled that in Atty. Martinez' appeal brief filed with the Court of Appeals, he claimed that:

"The Honorable Court below erred in the underlined portion of the decision also hereunder quoted:

"x x x

"(2) `3. (a) Declaring the Deed of Sale dated January 22, 1972 null and void. However, considering that one of the properties subject of the said sale was acquired under a Deed of Sale dated September 9, 1975 by Natividad Tangalin who is a `bona fide' purchaser and for value, the latter sale should be respected; x x x' (p. 33, Decision dated July 22, 1988)." [21]

Surely, the Court of Appeals may consider the issue of the validity of the subsequent sale of the same property on September 9, 1975, as it is the *lis mota* to the issue of the validity of the January 22, 1972 sale.

It is well-settled that appellate courts have ample authority to rule on matters not assigned as errors in an appeal, if these are indispensable or necessary to the just resolution of the pleaded issues.[22]

The Fallo

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the decision of the Court of Appeals,[23] and the resolution denying reconsideration.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Under Rule 65, Revised Rules of Court.

[2] In CA-G. R. CV No. 30792 promulgated on July 31, 1995, Petition, Annex "A", Rollo, pp. 31-41, Antonio P. Solano, J., ponente, Alfredo L. Benipayo and Ricardo P. Galvez, JJ., concurring.

[3] Dated September 7, 1995.

[4] Petition, Annex "A", Rollo, pp. 31-41, at pp. 31-35.

[5] Docketed as CA-G. R. CV No. 30792.

[6] In a resolution (CA Rollo, p. 67) dated September 11, 1991 pursuant to Section 1(d), now Section 1(c), Rule 50, 1997 Rules of Civil Procedure, as amended.

[7] Petition, Annex "D", Rollo, p. 78.

[8] CA Rollo, pp. 85-87.

[9] CA Rollo, pp. 97-99.

[10] Petition, Annex "E", Rollo, pp. 79-80.

[11] Petition, Annex "A", Rollo, pp. 31-41, at pp. 40-41.

[12] Manifestation and Motion for Reconsideration, CA Rollo, pp. 120-130.

[13] Petition, Annex "B", Rollo, p. 43.

[14] Petition, Rollo, pp. 10-29. On December 13, 1999, we gave due course to the petition (Rollo, pp. 158-159).

[15] Santos v. Court of Appeals, 221 SCRA 42, 46 (1993), citing De Lima v. Laguna Tayabas Co., 160 SCRA 70 (1988).

[16] Santos v. Court of Appeals, 221 SCRA 42, 46 (1993), citing Section 7, now Section 8, Rule 51 of the Revised Rules of Court.

[17] Petition, Annex "C", Rollo, pp. 44-77, at p. 71.

[18] Petition, Annex "A", Rollo, pp. 31-41, at p. 39.

[19] Article 1458, Civil Code of the Philippines.

[20] Gonzales v. Heirs of Thomas and Paula Cruz, 314 SCRA 585, 597 (1999), citing Segura v. Segura, 165 SCRA 368 (1988).

[21] Brief for Defendant-Appellant Pedro F. Martinez, CA Rollo, pp. 76-96, at p. 92.

[22] Logronio v. Talesco, 370 Phil. 907, 917 (1999), citing Saura Import and Export Co., Inc. v. Philippines

International Surety Co., Inc., 118 Phil. 150 (1963); Miguel v. Court of Appeals, 140 Phil. 304 (1969); Sociedad Europea de Financion, S. A. v. Court of Appeals, 193 SCRA 105 (1991); Larobis v. Court of Appeals, 220 SCRA 639 (1993).

[23] In CA-G. R. CV No. 30792.

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