

LORENZA ORTEGA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, CARMEN BASCON TIBAJIA AND NORBERTO TIBAJIA, JR., RESPONDENTS.

G.R. No. 125302. November 16, 1998

Ponente: VITUG, J.

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VITUG, J.:

In this petition, a purchaser in an execution sale (also called as an "auction vendee") assails the dismissal by the Court of Appeals of her appeal for lack of locus standi. The antecedent facts are sufficiently spelled out in the order, dated 08 January 1993, issued by the trial court; thus-

"On November 25, 1983, plaintiff Felipe L. Abel filed a complaint against the defendants Spouses Carmen Bascon Tibajia and Norberto Tibajia, Jr. to recover the sum of P250,000.00 which defendant Carmen Bascon Tibajia had obtained from the plaintiff, plus moral and actual damages, attorney's fees and costs.

"Upon the filing of the complaint, a writ of preliminary attachment prayed for in the complaint was issued ex-parte and upon a bond of P250,000.00 duly approved by the Court, the properties of the defendants were attached and levied by the Deputy Sheriff.

"For failure of the defendants to file their answer within the reglementary period, they declared in default on April 2, 1984 and plaintiff was authorized to present his evidence ex-parte.

"Plaintiff Felipe Abel died on April 25, 1984 during the pendency of this case and before he could present evidence to substantiate his complaint. Upon proper motion made therefor, his heirs were substituted as plaintiffs on July 30, 1984.

"On January 24, 1985, judgment was rendered in favor of the plaintiffs, Heirs of Felipe L. Abel, the dispositive portion of the decision reads as follows:

"WHEREFORE, on the basis of the facts established on record, the Court hereby renders judgment condemning the defendant spouses jointly and severally to pay the plaintiffs the principal sum of P250,000.00 with interest thereon at the legal rate computed from November 25, 1983 until fully paid, plus another amount of P50,000.00 as moral damages, and finally the amount of P10,000.00 as attorney's fees. Defendants shall also pay the costs of suit.

'SO ORDERED.'

"As the defendants could not be served with a copy of the decision on the ground that they had moved and their whereabouts were unknown and could not be ascertained despite diligent efforts, the court upon motion by the plaintiffs, granted leave to effect service of the decision upon the defendants by publication in a newspaper of general circulation.

"The decision was accordingly published in the 'Metropolitan Newsweek', a newspaper of general circulation once a week for three (3) consecutive weeks, specially on June 22, 29 and July 6, 1985, as evidenced by the

Affidavit of Publication executed by the Editor/Publisher Orville R. Mauricio. It appears also during this time that the plaintiffs (Heirs of Felipe Abel) assigned all their causes of action, rights, interests and participation in the case at bar in favor of Eden Tan, per Deed of Assignment dated March 22, 1985. On August 23, 1985, the assignee Eden Tan filed an ex-parte motion for execution of the decision, attaching to her motion the affidavit of publication of the decision and the deed of assignment. The motion was granted on August 26, 1985 and the corresponding writ of execution was issued on September 13, 1985.

"On December 17, 1985, Deputy Sheriff Perseverando Pangan sold at public auction the attached real properties of the defendant spouses Tibajia to the highest bidder Lorenza Ortega in the amount of P448,989.50, which amount was credited to the full satisfaction of the judgment debt." [1]

On 06 January 1986, the Sheriff's Certificate of Sale in favor of Lorenza Ortega was registered with the Registry of Deeds of Pasay City.

Meanwhile, on 05 January 1986, private respondents (the defendants in the court a quo) brought up a "Motion for Reception of Evidence of Excess Charges in the Bill of Costs, etc." asseverating that the amount of P35,319.00 in the bill of costs prepared by the assignee, Eden Tan, had been padded.

The trial court went on to narrate subsequent events; hence -

On January 22, 1986, Aurora Tibajia Vito, in behalf of the defendants, filed a motion to lift or set aside the writs of attachment and execution by offering to pay the money judgment. On March 14, 1986, Judge Segundino G. Chua ordered the plaintiffs' assignee, to file her opposition to the motion to lift attachment, and in the same Order directed Deputy Sheriff Perseverando Pangan to submit within ten (10) days from notice a detailed bill of costs, duly supported by official receipts so that the actual cost of sale together with all expenses would known." [2]

In an order, dated 23 March 1986, the trial court directed the submission of the bill of expenses together with supporting official receipts. On 09 April 1986, Deputy Sheriff Pangan filed a Manifestation expressing his inability to comply with the order explaining that all supporting receipts were in the possession of Mrs. Eden Tan, the assignee of prevailing plaintiff, and that, despite efforts made by him, Mrs. Tan was unable to produce and turn over the receipts. He attached to his manifestation the letter of Mrs. Eden Tan reading -

"TO MR. PERSEVERANDO C. PANGAN
Deputy Sheriff
RTC, Branch CXXX
Caloocan, Metro Manila

"Sir:

"In connection with the auction sale set on December 17, 1985 at the Pasay City Hall, Pasay City, 10:00 a.m., in the above-entitled case, our total bid price for the judgment debt mentioned on the Writ of Execution for the real properties is FOUR HUNDRED FORTY EIGHT THOUSAND NINE HUNDRED EIGHTY NINE & FIFTY CENTAVOS (P448,989.50) PESOS, broken down as follows:

Principal Obligation..... P250,000.00
Moral Damages..... 50,000.00
Interest at 12% per annum from Nov. 25,
1983 to Dec. 17..... 62,500.00
Publication of Sheriff Sale.....
English..... 20,000.00
Spanish..... 30,000.00

Publication of the Decision.....16,170.00
 Attachment Bond Premium.....4,569.50
 Attorney's Fees.....10,000.00
 Registration and Filing Fees.....750.00
 Sheriff's Fees and Expenses..... 5,000.00

 T O T A L P448,989.50

"Makati, Caloocan City, December 16, 1985.

"(SGD) EDEN TAN
 Assignee of the Heirs
 of Felipe L. Abel."[3]

Further events transpired in the court below; the trial court continued its narration; viz:

"On October 19, 1986, defendants and Aurora Tibajia Vito filed a motion to require Deputy Sheriff Pangan to comply with the Order dated March 14, 1986 to submit a bill of costs to be supported by official receipts and to be made under oath pursuant to Section 8, Rule 162 of the Rules of Court, and to furnish a copy of the same to counsel for the defendants since there was no compliance of said Order.

"As the twelve-month redemption period was about to expire the defendants on December 22, 1986 tendered the amount of P457,415.65 as redemption price, plus the other charges required by law, to the Chief Sheriff and Clerk of Court, RTC Kalookan City, who received the same and issued an Official Receipt therefor. (See Records, pp. 120, 122, 123, 123-A, 124).

"On January 5, 1987, defendants filed a motion for the refund of the excess deposit for redemption alleging that several items amounting to a total of P35,319.00 included by assignee Eden Tan in her bill of expenses given to the Deputy Sheriff are contrary to law, not being authorized by Rule 142, Section 10 of the Rules of Court that the same was not verified under oath, and that they were not expenses in the course of litigation, hence they prayed that the amount of P35,319.00 from the redemption price deposited with the Clerk of Court be refunded to them. Specifically the defendants objected to the following items in Eden Tan's bill of costs which was adopted by the Deputy Sheriff, to wit:

(1) Publication of Sheriff's Sale,
 English, Spanish (SIC)..... P10,000.00
 (2) Publication of Sale..... 8,000.00
 (3) Publication of Decision..... 7,000.00
 (4) Attachment Bond Premium.....4,569.00
 (5) Registration and Filing Fees.....750.00
 (6) Sheriff's fees and expenses.....5,000.00

 Excess claimed by defendants..... P35,319.00
 (Records, pp. 120-121). =====

"On October 28, 1987, defendants filed a motion for the reception of evidence to prove that the expenses and charges in the bill of costs were bloated and excessive and for damages and refund thereof, since there was no substantial compliance with the Order dated March 14, 1986 by the Deputy Sheriff who admitted that he could not present the official receipts to support the expenses for the 'reason that the receipts are in the physical possession of the assignee Eden Tan,' otherwise no costs should be considered in the redemption of the property (Records, p. 193). Lorenza Ortega, the highest bidder, opposed the motion.

"On October 17, 1988, the Court after considering the comment/opposition of the plaintiffs, issued an Order

granting the motion for reception of evidence, and in the same order Deputy Sheriff Pangan was again directed to comply with the Order of March 14, 1986. (Records, pp. 249-258). This Order was questioned by Eden Tan and Lorenza Ortega before the Court of Appeals in two separate petitions for certiorari and prohibition (C.A.-G.R. No. SP-16570 and C.A.-G.R. SP-16760, which were both dismissed by the Court of Appeals in Resolutions promulgated on June 20, 1989 and April 3, 1989, respectively).

"Deputy Sheriff Pangan filed a Manifestation on November 22, 1988, reiterating his previous manifestation that he could not submit the official receipts supporting the amount of claim of Eden Tan as those receipts are in the possession of Eden Tan. (Records, p. 262.)"[4]

In the hearings that followed, private respondents presented two witnesses, namely Orville R. Mauricio and Jaime Palisoc, publishers of Metropolitan Newsweek and of Nuevo Horizonte, respectively, from whose testimony, the trial court concluded that, indeed, the three items of expenses for the publication of the decision and the notice of execution sale in English and Spanish had been bloated and inflated by plaintiff-assignee Eden Tan. Orville Mauricio categorically declared having been paid only P7,000.00 for the publication of the decision and P10,000.00 for the publication of the notice of execution sale in English. Jaime Palisoc was himself positive that he had been paid only P8,000.00 by Eden Tan. Ultimately, of the amount of P76,489.50 claimed by Eden Tan to be expenses and charges in the Bill of Costs, only P25,516.00 was allowed to be taxed against the defendants (herein private respondents). After making the proper adjustments in the Bill of Costs, the trial court held the defendants (private respondents) to be entitled to a refund of P15,617.89 from the redemption price of P457,415.65 deposited with the Clerk of Court on 22 December 1986 within the redemption period of one year from the time the Sheriff's Certificate of Sale was registered with the Registry of Deeds of Pasay City on 06 January 1986. The redemption price was thereupon pegged by the trial court at P441,797.76; viz:

"x x x. Taking into account the costs allowed as above computed, the properties were sold at the auction sale in the net amount of P398,016.00, so that the redemption price is P398,016.00, plus interest at one per cent (1%) per month from the date of registration of the Sheriff's sale to the date of redemption, which is P441,797.76, shown as follows

Principal obligation -----	P250,000.00
Moral damages -----	50,000.00
Interest at 12% per annum from Nov.	
25, 1983 to Dec. 17 -----	62,500.00
Publication of Sheriff's Sale	
English -----	10,000.00
Spanish -----	8,000.00
Publication of Decision -----	7,000.00
Attachment Bond Premium -----	0 -
Attorney's Fees	10,000.00
Registration and Filing Fee -----	516.00
Sheriff's Fees and Expenses -----	0 -

Total -----	P398,016.00
Plus: Interest at 11% from Jan. 6, 1986	
to Dec. 22 P	43,781.76

Redemption price -----	P441,797.76"[5]
=====	

On 08 January 1993, the assailed Order was issued by the trial court, the dispositive clauses of which read:

"WHEREFORE, in view of all the foregoing considerations, the following orders are hereby entered:

"1. Approving as costs the amount of P25,516.00 to be taxed against the defendants, and to be included in the computation of the redemption price;

"2. Declaring that the principal redemption price of the properties sold in the execution sale is P398,016.00, with interest thereon at the rate of one per cent (1%) per month from January 6, 1986 up to the date of the deposit of the redemption price on December 22, 1986, or a total of 11%, equivalent to P43,791.76, thereby making a total of P441,797.76 as the redemption price of the properties.

"3. Declaring that the deposit of P457,415.67 made by the defendants on December 22, 1986 with the Clerk of Court and City Sheriff Ex-Officio for the redemption of the properties was validly and timely made;

"4. Ordering the Clerk of Court and City Sheriff Ex-Officio to deliver and pay to Lorenza Ortega, the highest bidder, the amount of P441,797.76 as the redemption price of the properties, and ordering Lorenza Ortega to accept the payment, and to refund to the defendants the amount of P15,617.89 (excess deposit) representing the difference between the amount deposited and the redemption price as herein determined;

"5. Ordering Deputy Sheriff Perseverando C. Pangan to execute the corresponding certificate in favor of the defendants; and

"6. Dismissing defendants' claim for attorney's fees and damages for not being proper, this being only an incident of the main case."[6]

This order was appealed by Eden Tan (assignee of the plaintiff) and herein petitioner Lorenza Ortega (purchaser at the execution sale) to the Court of Appeals (CA G.R. CV No. 40459). In her appellant's brief, petitioner Ortega opened up the issue of whether or not there had been a valid redemption made considering that the amount deposited with the Clerk of Court by way of redemption money was less than the acquisition cost paid by the auction vendee, plus legal interest of one percent per month, consistently with Rule 39, Section 30, of the Rules of Court.

In its decision, dated 07 June 1996, the Court of Appeals dismissed the appeal taken by both Eden Tan and Lorenza Ortega ratiocinating that -

"It is basic that only parties can appeal from a final judgment or order of a court. This is clearly inferred from Sec. 1 Rule 41 and Sec. 1, Rule 46 of the Rules of Court.

"In the case at bench; the Brief filed by Eden Tan is styled: 'Felipe L. Abel substituted by Eden Tan, plaintiff-appellant . . .' This is misleading because there was never a substitution of Felipe L. Abel as plaintiff except by his heirs upon his death. If the heirs of a deceased party do not automatically become parties in a case but an order of substitution is needed to make them such, a *minori* can a mere assignee of the interest of a party in a case automatically take the place of the latter in the suit.

"If Eden Tan and Lorenza Ortega were aggrieved by the Order of the lower court, they have ample remedies under the rules but alas, their personally bringing the case to this court on appeal is not one of them. They lack *locus standi*.

"In Our desire to give a chance to Eden Tan and Lorenza Ortega to explain this vital point and to justify their appeal, We set this case for preliminary conference and oral argument on June 3, 1996. Despite notice, neither Eden Tan, Lorenzo Ortega nor their counsels appeared prompting Us to issue an order requiring them to show cause why they should not be declared in contempt of court.

"WHEREFORE, upon the foregoing premises, this appeal is DISMISSED."[7]

In the instant petition for review before this Court (taken by Lorenza Ortega alone), petitioner Ortega brings up

the pith issue of whether or not she, the purchaser in the execution sale, has the right to appeal given the aforestated settings.

The Court sees no reversible error on the part of the Court of Appeals in responding negatively to the above question.

The participation of petitioner at the trial court was confined to an "Urgent Ex Parte Motion for an Order of New Title and Issuance of Owner's Certificate of Title," dated 05 October 1987, followed by a "Supplementary Motion for Issuance of New Titles" of 12 July 1989, as well as to the evidentiary hearings regarding the "bill of costs" made out by the sheriff in computing the redemption price, in connection with the proceeding for the execution of a final judgment. Admittedly, no formal motion for intervention was theretofore filed by petitioner.

The then applicable provisions of the Rules of Court on intervention read:

"Sec. 2. Intervention. - A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an office thereof.

"(a) Motion for intervention. - A person desiring to intervene shall file a motion for leave of court with notice upon all the parties to the action.

"(b) Discretion of court. - In allowing or disallowing a motion for intervention, the court, in the exercise of discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.

"(c) Complaint or answer in intervention. - The intervention shall be made by complaint filed and served in regular form, and may be answered as if it were an original complaint; but where intervenor unites with the defendant in resisting the claims of the plaintiff, the intervention may be made in the form of an answer to the complaint.

"(d) Time - Unless a different period is fixed by the court, the complaint or answer in intervention shall be filed within ten (10) days from notice of the order permitting such intervention." [8]

The 1997 Rules of Civil Procedure, presently governing, did not introduce any radical change; thus -

"SECTION 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer hereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

"x x x x x x x x

"SEC. 2. Time to intervene. - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties." [9]

Under the new rules, the "motion to intervene may be filed at anytime before rendition of judgment by the trial court," as against the language of the old rule stating that "a person may, before or during a trial, be permitted by the court, in its discretion to intervene x x x." Both the old and new rules, however, have the same requisites for intervention of a non-party, to wit:

- "(1) Legal interest in the matter in controversy; or
- "(2) Legal interest in the success of either of the parties; or
- "(3) Legal interest against both; or
- "(4) So situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof;
- "(5) Intervention will not unduly delay or prejudice the adjudication of rights of original parties;
- "(6) Intervenor's rights may not be fully protected in a separate proceeding." [10]

The person desiring to intervene shall file a motion therefor with leave of court with notice upon all the parties to the action which motion may be allowed or disallowed by the court at its discretion in the exercise of which the court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.

No such motion for intervention having been filed by petitioner, she was thereby never recognized as an intervenor. The filing of pleadings incidental to the execution process, i.e. as an auction vendee of the property of the defendant which were ordered sold by the trial court to satisfy the judgment obligation, did not, ipso jure, give her the legal standing of a party in interest to the main case. Indeed, petitioner herself admitted that the two motions she filed were, in effect, denied by the trial court in the order now being assailed.

Petitioner strongly insists that it would be the quintessence of injustice to deny her the right to appeal from the order, dated 08 January 1993, of the trial court. Not even a deeply held persuasion in the righteousness of a cause can justify playing loose with the rules. This Court has once said:

"Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." [11]

Nor has the appellate court been totally insensitive to petitioner's plight; it has said:

"In our desire to give a chance to Eden Tan and Lorenza Ortega to explain this vital point and to justify their appeal, We set this case for preliminary conference and oral argument on June 3, 1996. Despite notice, neither Eden Tan, Lorenza Ortega nor their counsels appeared prompting Us to issue an order requiring them to show cause why they should not be declared in contempt of court." [12]

At all events, the Court finds itself without cogent reasons to turn completely about the assailed judgment and to thereby conclude the commission by the appellate court of a reversible error.

WHEREFORE, the decision appealed from is AFFIRMED.

SO ORDERED.

Davide, Jr., Bellosillo, Panganiban, and Quisumbing, JJ., concur.

[1] Rollo, pp. 62-64.

[2] Rollo, pp. 64-65.

[3] Rollo, p. 66.

[4] Rollo, pp. 66-68.

[5] Rollo, pp. 77-78.

[6] Rollo, p. 79-80.

[7] Rollo, p. 23.

[8] Remedial Law Compendium, 5th Ed., Regalado, pp. 123-124.

[9] 1997 Rules of Civil Procedure, Feria, pp. 71-72.

[10] See 1997 Rules of Civil Procedure by Feria, pp. 71-72.

[11] Pedrosa vs. Hill, 257 SCRA 373, 379.

[12] Rollo, p.26.

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