ESTRELLA REAL ESTATE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF GONZALO TAN NAMELY, CAROLINA TAN, MERLY TAN, MELISSA TAN AND MARITESS TAN, RESPONDENTS.

G.R. No. 128862. September 30, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for review on certiorari seeks to annul the 27 November 1996 Decision of the Court of Appeals which affirmed the Decision of the Regional Trial Court, Br. 122, Kalookan City, in its Civil Case No. 15438 declaring the heirs of Gonzalo Tan as true owners of the two-story building standing on Lot No. 285, A. Mabini St., Kalookan City, owned by Estrella Real Estate Corporation (ESTRELLA).

Gonzalo Tan was the absolute owner of a parcel of land located along A. Mabini St., Kaloocan City, with an area of 2,020.18 square meters, more or less, as evidenced by TCT No. 22003. In 1952 Gonzalo allowed his brother Cenon Tan to construct a house on a portion thereof facing A. Mabini St. and referred to as House No. 193, now House No. 285, A. Mabini St., Kalookan City. Cenon had House No. 285 declared under Tax Declaration No. 6373 in his name and described the property as a one-story house made of strong materials with an aluminum roofing and a floor area of 37.44 square meters, and built on the land of Gonzalo Tan. Cenon gradually made improvements on the property over the years by extending the floor area of the house and putting up a second floor.

On 15 October 1958 Gonzalo Tan sold the entire lot to Gaw Bros. & Co., Inc., with their Deed of Absolute Sale specifying that the property subject thereof was "a parcel of land together with the improvements thereon (except those belonging to other persons) situated in Caloocan, Rizal, and more fully described in Transfer Certificate of Title No. 22003." Thereafter, TCT No. 22003 was cancelled and TCT No. 62712 was issued in the name of Gaw Bros. & Co.,. Inc.

Sometime in 1960 Cenon Tan sold House No. 285 in A. Mabini St. to his brother Gonzalo Tan by way of a verbal sale. The latter, together with his family, took possession of the property and made improvements thereon.

On 7 February 1977 Gaw Bros. & Co., Inc., sold the land to its sister company, petitioner Estrella Real Estate Corporation (ESTRELLA), and TCT No. C-4255 was issued in the vendee's name.

On 1 December 1980 Gonzalo Tan through his son Guillermo leased the ground floor of House No. 285 to Amalia Abata and Josephine Catalan. After Abata left in 1983 Catalan continued with the lease, setting up a furniture store on the ground floor under the name "Jade Furniture."

Meanwhile, on the same parcel of land now owned by ESTRELLA stood another house owned by Francisco Tan with address at No. 1911-Int. 5, Kalookan City. In 1982 Francisco demolished the house for a consideration from ESTRELLA. Thereafter, the lot, which was located at the back of House No. 285 although separated by a vacant

lot between them, was left idle.

In December 1983 Josephine Catalan, lessee of the ground floor of House No. 285, entered into a lease contract with ESTRELLA over Lot No. 1911 which was renewed on an annual basis until 1991.

On 14 June 1991 ESTRELLA filed an ejectment suit for non-payment of rentals against Josephine Catalan before the Metropolitan Trial Court of Kalookan City, docketed as Civil Case No. 19962. In its complaint, ESTRELLA represented itself as the owner of a commercial apartment located at and known as No. 1911-Int. 5, A. Mabini St., Kaloocan City, the frontage of which is House No. 285 also at A. Mabini St., Kaloocan City. The lower court ruled in favor of ESTRELLA and ordered the ejectment of Catalan. Catalan interposed successive appeals to the Regional Trial Court and Court of Appeals but to no avail. ESTRELLA then moved for execution pending appeal which was granted by the Metropolitan Trial Court, Br. 52. Thereafter, a writ of execution was issued and Deputy Sheriff Leonardo Calalang enforced the writ not only against Catalan but also against herein private respondent-heirs of Gonzalo Tan, namely, Manuel, Jaime, Corazon, Dominador Jr., Carolina, Merly, Marissa, Melissa and Maritess, all surnamed Tan, who continued possession of the second floor of House No. 285 after Gonzalo Tan died in 1991.

Fearing that they would be thrown out of House No. 285, respondent-heirs of Gonzalo Tan, except Manuel Tan, filed a complaint for Quieting of Title before the Regional Trial Court of Kalookan City, Br. 122, docketed as Civil Case No. C-15438. Manuel Tan, together with his wife, filed a separate Petition for Prohibition with the Regional Trial Court of Kalookan City, Br. 127, docketed as Civil Case No. C-296. In both cases, the two branches issued a temporary restraining order (TRO) enjoining petitioner ESTRELLA from evicting private respondents from House No. 285.

In the case for Quieting of Title, respondent-heirs of Gonzalo Tan subsequently amended their complaint to implead MTC Judge Delina H. Santiago and Deputy Sheriff Calalang as defendants after the latter served them with a Notice to Vacate pursuant to an alias writ of execution, notwithstanding the effectivity of the TRO. The court a quo then caused a copy of the TRO to be served on defendants Judge Santiago and Deputy Sheriff Calalang.

During the preliminary hearing on private respondents' application for the issuance of a writ of preliminary injunction, petitioner corporation, through its President, Enrique Castillo, claimed that it was the registered owner not only of Lot. No. 1911 but of House No. 285 as well. Petitioner alleged that Gonzalo Tan was a tenant of the corporation and paid rentals for the use of the house and lot. Castillo also testified that in 1984 Gonzalo Tan allegedly told him that he was already getting too old to carry on with the lease of the house and could no longer afford the same. Gonzalo allegedly proposed that his sublessee, Josephine Catalan, take over the lease. Castillo agreed and granted Catalan’s subsequent request that Lot No. 1911 be also included in the lease. Hence, petitioner contended that private respondents should also be evicted since they derived their right of possession from Catalan.

After conducting preliminary hearings, both Regional Trial Courts issued a writ of preliminary injunction enjoining petitioner ESTRELLA and all persons acting under it from evicting private respondents. Dissatisfied, ESTRELLA filed a Petition for Certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 19885, which the appellate court however denied.

After trial on the merits, including an ocular inspection on the premises, RTC-Br. 122 rendered a decision in favor of private respondent-heirs of Gonzalo Tan in Civil Case No. C-15438 declaring them as the true and absolute owners of House No. 285; ordering petitioner ESTRELLA to pay P20,000.00 as attorney’s fees; declaring permanent the preliminary injunction issued against petitioner; and, dismissing the counterclaim of private

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respondents against petitioner.

Both parties appealed. On 27 November 1996 the Court of Appeals affirmed the decision of the trial court with the modifications that (a) petitioner should pay private respondents P50,000.00 for moral damages, P20,000.00 for exemplary damages and another P20,000.00 for attorney's fees; (b) the Kalookan City Assessor's Office to issue a tax declaration in the name of private respondents over House No. 285; and, (c) the Register of Deeds of Kalookan City to annotate the fact of ownership of private respondents over House No. 285 on petitioner's TCT No. C-4255 covering the land. The appellate court did not give credit to petitioner's contention that Gonzalo Tan leased House No. 285 from ESTRELLA since it failed to present any lease contract between them. Neither could it show any receipt evidencing payment of rentals by Tan over House No. 285. The only evidence of the alleged lease was the bare assertion of its President Enrique Castillo that there existed a verbal lease between ESTRELLA and Tan, which the appellate court did not sustain.

Moreover, the Court of Appeals found that the lease contracts from 1984 to 1990 between petitioner and Josephine Catalan indicated the subject of the lease as a "certain parcel of land, situated at No. 1911 Interior 5, A. Mabini Street, Kalookan City" and did not include House No. 285. It was only when the contract was renewed on 10 January 1990 that the subject of the lease was described as an apartment building. Most telling was the Deed of Sale between Gonzalo Tan and Gaw Bros. & Co. which identified that "the parcel of land together with the improvements thereon (except those belonging to other persons)" was the property sold. Notwithstanding the fact that House No. 285 was not included in the sale, ESTRELLA's TCT gave the impression that it was the owner of the parcel of land and the improvements thereon. Hence, the appellate court concluded that ESTRELLA knew that House No. 285 was not included in the sale between Gonzalo Tan to Gaw Bros. & Co., Inc., but which fact was not annotated on its TCT.

Hence the instant petition alleging that the Decision of respondent appellate court has no legal and factual basis in holding that House No. 285 was built by Cenon Tan as one of the improvements excluded in the 1958 contract of absolute sale; in ordering the issuance of a tax declaration over House No. 285 in the name of private respondents and the annotation of the ownership of the latter in petitioner's TCT No. C-4255; and, in holding petitioner liable for damages, attorney's fees and costs of suit.

It is evident from the first and second assigned errors that the petition is anchored on the plea to review the factual conclusions reached by respondent appellate court. Such task is foreclosed by the rule that in petitions for review on certiorari as a mode of appeal, such as the instant case, only questions of law distinctly set forth may be raised. These questions have been defined as those that do not call for any examination of the probative value of the evidence presented by the parties.[1] In the absence of any showing that the findings complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand.

The evidence on record indubitably supports the findings of the Court of Appeals that when the parcel of land covered by TCT No. 22003 in the name of Gonzalo Tan was sold by the latter to Gaw Bros. & Co., Inc., the predecessor-in-interest of petitioner, House No. 285 belonging to Cenon Tan was among the improvements excluded from the sale as expressly provided in the deed of sale; that petitioner had never been in actual possession of House No. 285; on the contrary, it was Gonzalo Tan and his children who occupied House No. 285 in the concept of owner since 1960; and, that what was leased to Josephine Catalan was a vacant lot with address at 1911-Int. 5, and not House No. 285 which is owned by private respondents as heirs of Gonzalo Tan. Respondent appellate court also considered against petitioner the following admission of the latter's counsel in the pre-trial brief submitted before the court a quo, to wit:

> Defendants (petitioner) admit that Gonzalo Tan originally owned the land on which the subject building stands

> but he sold the land and all the buildings thereon (except the house owned by Cenon Tan) in 1958 to Gaw Bros. and Co. Inc. and that the latter sold the same property to defendant Estrella in 1977.[2]

As correctly found by the Court of Appeals, private respondents have the right to have their ownership of House No. 285 annotated in the certificate of title of petitioner over the land after the same is judicially settled. Section 78 of PD 1529 provides that whenever in any action to recover possession or ownership of real estate or any interest therein affecting registered land judgment is entered for the plaintiff, such judgment shall be entitled to registration on presentation of certificate of the entry thereof from the Clerk of the Court where the action is pending to the Register of Deeds for the province or city where the land lies, who shall enter a memorandum upon the certificate of title of the land to which such judgment relates. If the judgment does not apply to all the land described in the certificate of title, the certificate of the clerk of the court where the action is pending and the memorandum entered by the Register of Deeds shall contain a description of the land affected by the judgment.

Whether private respondents should be issued by the Kalookan City Assessor a tax declaration in their name over House No. 285 should be answered in the affirmative. This is pursuant to Sec. 204 of the Local Government Code which provides that when any person, natural or juridical, by whom real property is required to be declared under Sec. 202 of the same Code, refuses or fails for any reason to make such declaration within the time prescribed, the provincial, city or municipal assessor shall himself declare the property in the name of the defaulting owner, if known or against an unknown owner as the case may be, and shall assess the property for taxation. The finding of the Court of Appeals that private respondents had never declared House No. 285 in their name for taxation purposes after the death of their father on 19 September 1991, being conclusive and binding on this Court, warrants the application of Sec. 204 of the Local Government Code.

As to the propriety of the award by the Court of Appeals of moral and exemplary damages and attorney's fees, we find the same to be without basis. The only evidence presented by private respondents in support of their claim for damages was the testimony of one of the private respondents, Manuel Tan, who said that his father, Gonzalo Tan, was hospitalized because of the filing of the ejectment case by petitioner.[3] Records would show however that petitioner filed the ejectment case against Josephine Catalan and not against Gonzalo Tan although the judgment which ordered the eviction of Catalan was later sought to be enforced by the court sheriff against private respondents who after the death of their father became the new owners of House No. 285.

Nothing in the records would show that this case falls within any of the cases enumerated in Arts. 2219 and 2220 in compliance with the requisites for the award of moral damages.[4] The same is true with respect to exemplary damages where justification for the same has not been shown. Notwithstanding the deletion of the award of moral and exemplary damages, this Court affirms the award of attorney’s fees. This may be allowed if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of the unjustified act or omission of the party from whom it is sought.[5] In the instant case, petitioner was not justified in allowing the writ of execution in the ejectment case to be enforced against private respondents not only because the latter were not impleaded as parties in the ejectment suit but also because the property involved therein was separate and different from the property belonging to private respondents.

WHEREFORE, the Decision of the Court of Appeals dated 27 November 1996 is AFFIRMED subject to the modification that the award of moral and exemplary damages is deleted. Consequently, the respondent-heirs of Gonzalo Tan are declared the owners of the house at No. 285 A. Mabini St., Kalookan City.

The Kalookan City Assessor is ordered to issue a declaration over the subject house in the name of private respondent-heirs of Gonzalo Tan and to assess the property accordingly for taxation purposes pursuant to Sec. 204 of the Local Government Code.

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Upon the issuance by the Clerk of Court of the entry of judgment, private respondents shall have the right to register this judgment with the Register of Deeds of Kalookan City, who is directed to enter a memorandum of the ownership of private respondents over the subject house on TCT No. C-4255 in the name of petitioner Estrella Real Estate Corporation.

Petitioner is further directed to pay private respondent-heirs of Gonzalo Tan attorney's fees in the amount of P20,000.00. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Elayda v. Court of Appeals, G.R. No. 49327, 18 July 1991, 199 SCRA 349.

[2] Records, p. 131.

[3] TSN, 3 November 1992, p. 18.

[4] Del Mundo v. Court of Appeals, G.R. No. 104576, 20 January 995, 240 SCRA 348.

[5] PNB v. Court of Appeals, G.R. No. 10830, 2 April 1996, 256 SCRA 44.

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