ANTONIA HUFANA, WILFREDO MANAOIS, CRISTILYN CASTILLA, SPOUSES ANDRONICO & MINERVA DE LOS REYES, SPOUSES TOMAS VERGARA & MERLINDA LOZANO, SPOUSES CATALINO & MARCELINA PIGAO, SPOU...

G.R. No. 141209. September 17, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A resolution of the trial court granting not only partial execution, but also deciding substantive matters delving on the merits of the parties' claims, may be the subject of an ordinary appeal to the Court of Appeals (CA) because it constitutes a final determination of the substantive issues resolved therein.

Statement of the Case

Before this Court is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court, praying for the nullification and reversal of the July 22, 1999 Decision[2] of the Court of Appeals[3] in CA-GR CV No. 56750 and its December 3, 1999 Resolution[4] denying reconsideration. The dispositive portion of the assailed CA Decision reads as follows:

> "WHEREFORE, the Resolution of July 1, 1997 of the trial court, appealed from, is set aside, and another entered, granting and directing the issuance of the alias writ of execution prayed for by plaintiff-appellant [herein respondent]. Cost against the appellees [herein petitioners]."[5]

The Facts

On October 20, 1989, herein respondent, William Ong Genato, filed before the Regional Trial Court (RTC) of Quezon City a Complaint to foreclose a real estate mortgage over two parcels of land. Originally owned by Oakland Development Corporation ("Oakland"), these lots were covered by Transfer Certificate of Title (TCT) Nos. 356315 and 366380. After trial on the merits in Civil Case No. Q-89-3814, the trial court[6] rendered a Decision in favor of Genato. Dated May 21, 1991, the RTC Decision contained the following disposition:

> "The claim of the plaintiff having been established and proved by evidence, judgment is hereby rendered ordering the defendant OAKLAND DEVELOPMENT RESOURCES CORPORATION, thru its president PRATER ESPLANA, to pay plaintiff WILLIAM ONG GENATO by depositing in this court within 90 days from receipt of a copy of this decision, the sums of:
>
> a) P2,000,000.00 representing the [principal] obligation;
>
> b) P100,000.00 representing 5% interest on the principal obligation commencing in October, 1989 until fully paid;
>
> c) P100,000.00 as and for attorney's fees; and
>
> d) P9,292.00 as cost of suit.

> "Should the defendant fail to pay the principal, interest and costs within the specified time, the Court shall order the sale of the properties covered by Transfer Certificates of Title Nos. 356315 & 366380 of the Registry of Deeds of Quezon City in the manner and under the regulations that govern sales of real estate under execution."[7]

Unconvinced, Oakland sought relief from the Court of Appeals which, however, affirmed the trial court on July 28, 1992. When the CA Decision became final and executory on August 27, 1992, Genato filed a Motion for Execution, which was granted by the RTC on December 7, 1992. Pursuant thereto, the branch clerk of court[8] issued an "Execution Foreclosing Mortgage" dated December 9, 1992, and scheduled the auction sale of the foreclosed properties on January 14, 1993.

On January 11, 1993, a Petition for Prohibition with a prayer for a temporary restraining order or writ of preliminary injunction was filed before the Supreme Court. Through this Petition, the alleged owners/buyers of the mortgaged properties sought to restrain the trial court from proceeding with the auction on the ground that the mortgage was void. The case was docketed as GR No. 108285 and assigned to this Court's Second Division which subsequently issued on January 13, 1993, a Temporary Restraining Order (TRO) barring the auction sale scheduled on January 14, 1993.

On January 8, 1993, Oakland filed before the Court of Appeals a Petition for Relief from Judgment with Preliminary Injunction and Prayer for Temporary Restraining Order. It likewise filed a Very Urgent Ex Parte Motion to Defer the public auction sale scheduled on January 14, 1993. However, the CA denied the Petition through a Resolution dated January 25, 1993.

Dissatisfied with the CA Resolution, Oakland filed before this Court a Petition for Certiorari and Prohibitory Injunction, docketed as GR No. 109967. In its Resolution dated June 2, 1993, this Court's Second Division dismissed it for having been filed beyond the reglementary period.

With respect to GR No. 108285, this Court's Third Division, to which the case was reassigned, issued a Resolution, dated May 5, 1993, referring the case to the Court of Appeals for disposition. The former Special First Division of the CA subsequently dissolved the Supreme Court's TRO and dismissed the Petition in a Decision dated February 3, 1994. It affirmed the validity of the mortgage and declared Oakland liable to Genato. The separate Motions for Reconsideration filed by Oakland were denied by the CA through a Resolution dated July 21, 1994. For its nonpayment of the prescribed docket fees, its appeal to this Court was likewise denied. Also denied with finality on December 12, 1994 was the Motion for Reconsideration.

Due to the finality of the Resolution dated December 12, 1994, Genato filed before the RTC an Ex Parte Motion for Execution of Judgment. Oakland opposed the Motion, while the intervenors in the case (herein petitioners) filed an Urgent Manifestation with Motion to Intervene and an Opposition to Herein Plaintiff's Ex Parte Motion for Execution. Both Oakland and herein petitioners based their opposition on a Decision dated March 20, 1995 issued by the Housing and Land Use Regulatory Board (HLURB) in HLRC Case No. REM A-940322-0060. This case, entitled "Cristilyn Castilla et al. v. Oakland Development Resources Corporation, Prater Espana & William Ong Genato," declared the mortgage between Genato and Oakland void insofar as third parties were concerned. The dispositive portion of the HLURB Decision reads as follows:

> ``WHEREFORE, in view of the foregoing premises, judgment is hereby rendered SETTING ASIDE the Judgment Upon Compromise dated 23 June 1993 and a new judgment is hereby set:
>
> "1. Declaring the Mortgage between Oakland Resources Development Corporation and William Ong Genato as null and void at least insofar as third parties are concerned in the absence of the written approval of the Board for the same pursuant to Section 18 of P.D. 957; however, it remains valid as a contract of indebtedness

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between the parties;

"2. Declaring the buyers to have a superior right over the lots in question as against the mortgage, and enjoining the la[t]ter from foreclosing the properties or consolidating its title or performing x x x any act that would disturb complainants['] rights over the property in question;

"3. Respondents Oakland Development Resources Corporation and Prater Esplana are directed to:

a. Register with the Register of Deeds the Deeds of Absolute Sale executed by and between aforesaid respondents and the following complainants:

- Cristilyn Castilla

- Andronico and Minverval[9] delos Reyes

- Tomas Vergara and Merlinda Lozana

- Wilfredo and Elizabeth Maneois[10]

- Catalin and Mercedes Pigao

- Crisanto and Corazon Robles

- Lourdes Yuranasiri & Antonio Hufana

- Vincent and Emiliana Shwalbe

and Contracts to Sell executed by and between aforesaid respondents and complainants:

- Antonio and Fermina Bucad

- Ma. Theresa Ong

- Jack and Josephine Rafael

- Ely and Dionisa Tejada

- Johnny and Leticia Sunico

b. Surrender to the Register of Deeds TCT No. 366380 for cancellation and issue the corresponding TCT's to the 8 complainants who fully paid the purchase price of their respective houses and lots;

c. Yield to respondent William Ong Genato such portion of property in Prater Village III as would equal the balance of the loan they contracted with Genato;

d. Reimburse complainants for the electrical consumption paid by the latter subject to [the] presentation of proper receipts; and

e. Pay the amount of P10,000.00 as attorney's fees to each of the complainants who incurred expenses for protecting their rights.

"4. Directing the Register of Deeds of Quezon City to cancel TCT No. 366380 and issue the corresponding transfer Certificate Title to:

b. Cristilyn Castilla
c. Andronico and Minerva delos Reyes
d. Tomas Vergara and Merlinda Lozano
e. Wilfredo and Elizabeth Manaois
f. Catalin and Mercedes Pigao

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g. Crisanto and Corazon Robles
h. Lourdes Yivanasiri & Antonio Hufana
i. Vincent and Emiliana Shwalbe

"5. Respondent Oakland Development Resources Corporation is ordered to pay P10,000.00 as administrative fine to the Board for its wilful violation [of] the provisions of P.D. 957."[11]

Citing the HLURB Decision, the trial judge denied Genato's Ex Parte Motion for Execution of Judgment on August 18, 1995. However, on reconsideration and upon manifestation that he would respect the Deeds of Absolute Sale/Contracts to Sell executed by Oakland in favor of the intervenors/petitioners, the RTC issued a Resolution dated 14 May 1996 allowing execution to proceed, but limited the auction sale to the lot covered by TCT No. 366380, except those portions that had been bought and occupied by the intervenors.

Pursuant to that Resolution, the branch clerk of the trial court subsequently issued an Alias Execution Foreclosing Mortgage, directing the sale at public auction of specific portions of Lot No. 366380. During the auction sale, Genato was able to purchase the property.

Subsequently, an Urgent Motion to Nullify Auction Sale with Prayer for Injunction and/or Restraining Order, alleging irregularities in the issuance of the Alias Writ of Execution, the Notice of the Sheriff's Sale and the auction sale itself was filed. The Motion was, however, denied on December 12, 1996.

Subsequently, Genato submitted a Motion for Issuance of Alias Writ of Execution. Meanwhile, Oakland filed a Motion for Reconsideration of the Resolution dated May 14, 1996 and for Accounting, in order to identify the obligations satisfied by the proceeds of the auction sale. Furthermore, Genato filed two separate Motions -- one for the issuance of an alias writ of execution of the deficiency judgment to foreclose the other parcel covered by TCT No. 356315/PR-10397; and second, for the confirmation of sale.

Resolution of the Trial Court

On July 1, 1997, the RTC issued a Resolution that took special note of the aforesaid HLURB Decision dated March 20, 1995.[12] The trial court declared the mortgage between Oakland and Genato null and void insofar as third parties were concerned. It further ruled that the buyers - herein petitioners -- had a superior right thereto. Thus, it enjoined respondent from foreclosing the properties and then resolved that the sale of the lot covered by TCT No. 366380 be confined only to those portions that had not been bought or occupied by herein petitioners/intervenors. Moreover, it precluded respondent from foreclosing the property covered by TCT No. 356315.

Ruling of the Court of Appeals

In the assailed Decision, the Court of Appeals stated that it had already ruled upon the validity of the mortgage. Since validity was the primary issue raised in a previous case filed before it, the said ruling is already conclusive upon the same issue raised by the same parties before the HLURB. The CA Decision cannot be contravened by a subsequent ruling of the HLURB. It was therefore erroneous for the trial court to ignore the Decision of a higher court.

Hence, this recourse.[13]

The Issues

In their Memorandum, petitioners raise the following issues for this Court's consideration:

"Whether or not the remedy taken by herein respondent in appealing to the Court of Appeals the Resolution issued by the lower court on July 1, 1997, involving the issuance of an alias writ of execution pursuant to

> [Rule] 41 and/or 42 of the 1997 Rules of Civil Procedure, was proper, instead of a Petition for Review by way of Certiorari under [Rule] 45 or 65 of said Rules, directly before this Honorable Court.
>
> "Whether or not, assuming the remedy taken by respondent is permitted, matters pertaining to a writ of execution that has been partially executed, may still be appealed.
>
> "Whether or not respondent is already estopped from questioning the effects or consequences of such writ of execution that has already been partially executed."[14]

Basically, the issues raised by petitioners boil down to whether the appeal to the CA of the July 1, 1997 RTC Resolution is proper, considering that the Resolution purports to be merely an order of execution which is allegedly interlocutory in nature.

This Court's Ruling

The Petition has no merit.

Basic IssuePropriety of Appeal

The main issue raised by petitioners revolves on the propriety of respondent's appeal of the RTC Resolution dated July 1, 1997. Petitioners claim that the Court of Appeals erred in taking cognizance of the appeal, the subject of which was in fact a trial court order partially granting respondent's motion for execution.

Respondent, on the other hand, argues that the subject matter of the questioned RTC Resolution was a final order and, hence, appealable to the CA under Section 1 of Rule 41 of the Rules of Court.

We agree with respondent. Normally, decisions and final orders of regional trial courts are appealable to the Court of Appeals. Section 1 of Rule 41, however, enumerates the following RTC orders that may not be appealed:

> "SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> "No appeal may be taken from:
>
> (a) An order denying a motion for new trial or reconsideration;
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) An interlocutory order;
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;
>
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (h) An order dismissing an action without prejudice.
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n)"

The last paragraph of the above rule provides a remedy for non-appealable orders -- certiorari under Rule 65.

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Grave abuse of discretion, upon which certiorari is based, refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[15]

Clearly, under Section 1(f) of Rule 41, an order of execution issued by a trial court is not appealable.

In this case, the RTC Resolution dated July 1, 1997 resolved, among others, to grant in part, as well as deny in part, the Motion for an Alias Writ of Execution filed by respondent. The net result of the trial court's Resolution was that Genato was precluded from foreclosing the mortgage on the property covered by TCT No. 356315. Note, however, that he was allowed to foreclose the lot covered by TCT No. 366380, which consisted of around 4,334 square meters, but not the portions already purchased by petitioners pursuant to the Agreement he had entered into with petitioners.

It must, at this point, be stressed that the Resolution to grant partial execution was based on the HLURB Decision involving the same parties and subject matter. In fact, the trial court itself stated that its Resolution was anchored on a supervening event, the said HLURB ruling. The RTC Resolution stated thus:

> "This court would like to impress upon the parties that [in] consonance to its Resolution issued on August 18, 1995 in relation to its Resolution issued on May 14, 1995, vis-à-vis the Decision rendered by the Housing and Land Use Regulatory Board in HLRB Case No. REM A-940322-0060, promulgated on March 20, 1995 [--] which has become final and executory on June 27, 1995 after William Ong Genato's motion for reconsideration was denied [--] the sheriff shall confine the sale to the parcel of land covered and embraced in Transfer Certificate of Title No. 366380 and shall see to it that no portion or lots bought and occupied by the intervenors shall be included nor shall be the subject of the auction sale."[16]

It is clear therefore, that the trial court did not merely grant execution. Rather, it also resolved matters that delved on the merits of the claims of both parties. It did not merely order something to be done pursuant to a previous final decision, but resolved issues determinative of the final outcome of the case. As such, the Resolution is in effect a final order that may be appealed to the CA under the Rules of Court.[17]

Precedence of the CA Decision over the HLURB Decision

The CA did not err in invalidating the HLURB ruling in Case No. REM A-940322-0060 voiding the mortgage over the land covered by TCT No. 356315/PR-10397. Certainly, the ruling cannot take precedence over the February 3, 1994 CA Decision upholding the validity of the subject mortgage.

First, the CA Decision has already become final and executory. A final decision rendered by a competent court can no longer be relitigated, as held by this Court in De Villa v. Jacob,[18] a portion of which we quote:

> "It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision, continues to be binding between the same parties as long as the facts on which the decision was predicated, continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be relitigated anew since said issue had already been resolved and finally laid to rest in that aforementioned case (Miranda v. CA, 141 SCRA 306 [1986]), if not by the principle of res judicata, but at least by conclusiveness of judgment (Vda. de Sta. Romana v. PCIB 118 SCRA 335 [1982])."

Second, a decision rendered by the Court of Appeals should take precedence over that of the HLURB, since the former is definitely a higher tribunal. There is such a thing as a hierarchy of courts in this country. HLURB

decisions are in fact reviewable by the CA.

Third, petitioners failed to raise the alleged impropriety of respondent's appeal before the Court of Appeals. Doctrinally settled is the rule that issues not raised below cannot be taken up on appeal.

> "It is well-settled that points of law, theories, and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal. Allowing petitioner to change horses in midstream, as it were, is to run roughshod over the basic principles of fair play, justice and due process."[19]

On the other hand, the July 1, 1997 Resolution of the trial court has long become final and executory in regard to petitioners, who failed to appeal within the reglementary period. Hence, this Court can no longer grant them any relief. They are estopped from questioning the effects or consequences emanating from the partial execution of the questioned Writ. In this Court's words: "The rule is clear that no modification of judgment could be granted to a party who did not appeal. It is enshrined as one of the basic principles in our rules of procedure, specifically to avoid ambiguity in the presentation of issues, facilitate the setting forth of arguments by the parties, and aid the court in making its determinations. It is not installed in the rules merely to make litigations laborious and tedious for the parties. It is there for a reason."[20]

WHEREFORE, the Petition is hereby DENIED and the assailed Decision AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur

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[1] Rollo, pp. 8-23. The Petition was signed by Atty. Tomas N. Prado, counsel for petitioners.

[2] Rollo, pp. 27-41.

[3] Fourth Division; penned by J. Teodoro P. Regino and concurred in by JJ Salome A. Montoya (Division chairman) and Conrado M. Vasquez Jr. (member).

[4] Rollo, pp. 43-44.

[5] Assailed Decision, p. 15; Rollo, p. 41.

[6] Penned by Judge Cezar C. Peralejo.

[7] Assailed Decision, p. 4, Rollo, p. 30.

[8] Reynaldo M. Elcano.

[9] Also spelled "Minerva" in the HLURB Decision dated March 20, 1995.

[10] Also spelled "Manaois" in the HLURB Decision dated March 20, 1995.

[11] Assailed Decision, pp. 6-9, Rollo, pp. 32-35.

[12] See pp. 6-8 of this Decision.

[13] This case was deemed submitted for decision on January 18, 2001, upon this Court's receipt of the Memorandum for respondent, signed by Atty. Franklin M. Canto of Millora & Associates. The Memorandum for petitioners, signed by Atty. Tomas N. Prado, was filed on December 12, 2000.

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[14] Memorandum for petitioner, pp. 7-8; Rollo, pp. 195-196.

[15] People v. Court of Appeals and Casan Maquiling, 308 SCRA 687, June 21, 1999, citations omitted, per Panganiban, J.

[16] Resolution of the trial court dated July 1, 1997, p. 9; Rollo, p. 131.

[17] See Felix Uy Chua et al., v. Court of Appeals, GR No. 121438, October 23, 2000; Yasuda v. Court of Appeals, 330 SCRA 385, April 12, 2000; Baluyotv. Guiao, 315 SCRA 396, September 28, 1999; and Fortich v. Corona, 289 SCRA 624, April 24, 1998.

[18] 167 SCRA 303, November 14, 1988, per Paras, J.

[19] San Juan Structural & Steel Fabricators, Inc. v. Court of Appeals, 296 SCRA 631, 649, September 29, 1998 per Panganiban, J. See also Sanchez v. Court of Appeals, 279 SCRA 647, September 29, 1997; First Philippine International Bank v. Court of Appeals, 252 SCRA 259, January 24, 1996 and Caltex (Philippines), Inc.v. Court of Appeals, 212 SCRA 448, August 10, 1992.

[20] Batingal v. Court of Appeals, GR No. 128636, February 1, 2001, per Bellosillo, J.

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