

TERESITA PACAÑA CONEJOS, PETITIONER, VS. COURT OF APPEALS AND EUTQUIO PLANIA, RESPONDENTS.

G.R. No. 149473. August 09, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Respondent EUTQUIO PLANIA alleged in his Complaint for specific performance/rescission with damages[1] filed with the municipal trial court that on 19 September 1989 he entered into a [2] with Teresita Pacaña Conejos whereby they agreed that each of them would pay half of the purchase price of the 134-square-meter residential lot situated in Tisa, Labangon, Cebu City, subject matter hereof, and that upon full payment they would equally divide the lot and register it in their individual names.

Plania averred that after paying P22,804.91 corresponding to the value of his one-half share, petitioner Teresita Pacaña Conejos, despite repeated demands, refused to divide the subject lot and register it in their individual names conformably with their agreement.

Respondent Plania brought the matter to the Office of the Barangay Captain of Tisa, Labangon, Cebu City, and, as borne out by the Minutes of Hearing of 4 May 1995[3] Plania shelled out the amount of P22,804.91 to the Borromeo Bros. Estate, Inc., as payment for his one-half (1/2) portion of the lot. At the same time Plania admitted having authorized herein petitioner Teresita Pacaña Conejos to sell his share in the property to Nenita Gavan but petitioner Conejos failed to remit the proceeds of the sale to him. This admission was likewise evidenced by the Minutes.

During their meeting, Teresita Pacaña Conejos promised to pay the amount of P22,804.91 to Plania in June 1995, but Conejos reneged on her promise so that Plania instituted this instant action before the Municipal Trial Court in Cities in Cebu City.

In her Answer[4] Conejos alleged that the dated 19 September 1989 was mutually abandoned by the parties and that Plania's alleged payment was frowned upon by the Statute of Frauds. According to Conejos, the stipulations contained in the Minutes of the Hearing were mere proposals by Plania for an amicable settlement which she rejected.

On 9 March 1999 the MTCC-Br. 7, Cebu City, dismissed the complaint[5] ruling that Plania had failed to present sufficient evidence to substantiate his allegations.[6] The municipal trial court noted that the official receipts offered in evidence by Plania were not issued in his name but in the name of Conejos. It lent more credence to the testimony of Conejos that the had been mutually abandoned by the parties considering that Plania did not even attempt to inform the Borromeo Bros. Estate, Inc., about the aforesaid Agreement. It opined that had Plania done so, then the official receipts and the Deed of Sale would have been issued in both their names and not in the name of Conejos alone. It did not give any probative value to the Minutes of the Hearing before the Office of the Barangay Captain on the ground that it was only signed by the Pangkat Secretary and the Barangay Chairman but not by Plania and Conejos.

The Regional Trial Court, Br. 9, of Cebu City[7] reversed the MTCC. It ruled that except for the unilateral claim by Conejos that the had been cancelled no other evidence was proffered to prove the same. It ratiocinated that a written agreement like the subject could not be considered abandoned by the mere say-so of one of the parties thereto. The Borromeo Bros. Estate, Inc., need not even be informed of the Agreement for its validity because the latter was not a party to it and as such the Agreement remained binding as between Plania and Conejos.

The trial court validated the Minutes of the Hearing noting that it was an official document issued by the Pangkat Secretary and attested by the Pangkat Chairman and that its authenticity was never put in question. It ruled that the Minutes was admissible and should be given weight as it did not lose its evidentiary value as a record of what transpired during the meeting despite the lack of signatures of Plania and Conejos. It also observed that when Pangkat Secretary Samuel F. Valderama testified in open court and identified the document under oath he appeared to be objective and unbiased.

In lending credence to the claim of Plania that he paid some amounts of money to the Borromeo Bros. Estate, Inc., the trial court stressed that it was understandable that the official receipts were issued in the name of Conejos and not in the name of Plania considering that Conejos was considered by the Borromeo Bros. Estate, Inc., as the original buyer of the property. To require the Borromeo Bros. Estate, Inc., to issue official receipts in the names of both Plania and Conejos would have complicated the matter considering that Borromeo Bros. Estate, Inc., was not privy to the .

Likewise, the trial court noted that since Plania had authorized Conejos to sell his portion of the property and that Conejos had in fact sold the property to Nenita Gavan, then Plania could not very well recover his portion of the property. Considering the foregoing, Conejos should reimburse the value of the property sold to Gavan or, if she was so minded, to turn over her portion of the property to Plania.

Conejos moved for reconsideration[8] but the same was denied,[9] hence she filed a Petition for Review[10] with the Court of Appeals. Finding no merit in her arguments, the appellate court affirmed the Regional Trial Court concluding that there was dearth of evidence that the had been mutually abandoned by the parties. It likewise debunked the thesis of petitioner that the Minutes of the Hearing was unenforceable for lack of signatures.[11] Petitioner's motion for reconsideration[12] having been denied,[13] she filed the instant Petition for Certiorari.[14]

Petitioner basically argues that the Court of Appeals gravely abused its discretion amounting to lack of jurisdiction (a) in not ruling that there was mutual cancellation by both parties of the of 19 September 1989; and, (b) in giving any probative value to the Minutes of Hearing of 5 May 1995 and the official receipts presented in evidence by Plania.[15]

In support of her arguments, petitioner insists that she never admitted the veracity of the contents of the Minutes of the Hearing. She alleges that what she admitted instead was the confrontation between her and Plania before the Lupon. She maintains that the contents of the Minutes of the Hearing were mere proposals of Plania for a possible amicable settlement that never materialized.

Petitioner likewise asserts that the was mutually cancelled considering the failure of Plania to prove payments to the Borromeo Bros. Estate, Inc., and the fact that the certificate of title to the lot was issued solely in the name of Conejos.

At first glance, petitioner's Petition for Certiorari should be summarily dismissed for adopting the wrong mode of appeal. The Court of Appeals promulgated its Decision dismissing petitioner's petition for review on 9 January 2001 and received by petitioner on 22 January 2001. Petitioner filed a motion for reconsideration on 29 January

2001 but the Court of Appeals denied the same in its Resolution of 31 May 2001, notice of which was received by petitioner on 13 June 2001. Petitioner's remedy would have been to file a petition for review on certiorari before this Court, and, counting fifteen (15) days from receipt of the resolution denying her motion for reconsideration petitioner had until 28 June 2001 to file a petition for review on certiorari before this Court. However, instead of a petition for review on certiorari petitioner filed on 13 August 2001 a petition for certiorari or one (1) month and twenty-five (25) days after the lapse of the allotted period within which to file a petition for review on certiorari.

Apparently, petitioner resorted to this special civil action after failing to appeal within the fifteen (15)-day reglementary period. This cannot be countenanced. The special civil action of certiorari cannot be used as a substitute for an appeal which petitioner already lost. Certiorari lies only where there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. There is no reason why the question being raised by petitioner, i.e., whether the appellate court committed a grave abuse of discretion in dismissing petitions, could not have been raised on appeal.[16]

Concededly, there were occasions when this Court treated a petition for certiorari as one filed under Rule 45 of the Rules of Court. However, the circumstances prevailing in the instant case do not justify a deviation from a general rule. Notably, the instant petition was filed way beyond the reglementary period allowed under Rule 45 without any justifiable reason therefor nor any reasonable explanation being proffered by petitioner. In addition, the arguments she cited are without merit and are in fact mere rehash of the issues raised before and judiciously resolved by the courts a quo. The issues require a review of the factual findings which, verily, could not be done because this Court is not a trier of facts. More importantly, a reading of the records of the case strengthens our disposition that both the trial and the appellate courts did not abuse their discretion in assessing their factual findings. We find their conclusions amply supported by the records of the case and grounded in law.

WHEREFORE, the instant Petition for Certiorari is DISMISSED as a wrong remedy and for utter lack of merit. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, and Corona, JJ., concur.

[1] Filed at the Municipal Trial Court in Cities of Cebu City; Docketed as Civil Case No. R-36148; CA Rollo, pp. 36-38.

[2] CA Rollo, p. 40.

[3] Id., p. 41.

[4] Id., pp. 42-49.

[5] Penned by Judge Amado B. Bajarias, Sr.; CA Rollo, pp. 102-106.

[6] MTCC Decision, p. 3; CA Rollo, p. 104.

[7] Penned by Judge Benigno G. Gaviola; CA Rollo, pp. 120-129.

[8] CA Rollo, pp. 130-140.

[9] Id., pp. 142-143.

[10] Id., pp. 3-35.

[11] Decision penned by Associate Justice Bernardo P. Abesamis, concurred in by Associate Justices Godardo A. Jacinto and Eliezer R. De los Santos; CA Rollo, pp. 453-463.

[12] CA Rollo, pp. 464-472.

[13] Id., p. 483.

[14] Rollo, pp. 5-35.

[15] *Id.*, p. 26.

[16] *Republic v. Court of Appeals*, G.R. No. 129846, 18 January 2000, 322 SCRA 81, 86.

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