

SUSAN HONORIDEZ, JOSEFINA H. LOPEZ AND CONSTANTINA H. SANCHEZ, PETITIONERS, VS. MAKILITO B. MAHINAY, JOCELYN “JOY” B. SORENSEN AND HUSBAND NAME UNKNOWN, ARTHUR CABIGON, AND FELI...

G.R. NO. 153762. August 12, 2005

Ponente: TINGA, J.

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TINGA, J.:

This petition for review under Rule 45 filed by Susan Honoridez, Josefina H. Lopez and Constantina H. Sanchez assails the 22 March 2002 Order of the Regional Trial Court (RTC), 7[th] Judicial Region, Branch 58, Cebu City in Civil Case No. CEB-23653 which denied petitioners' three (3) motions.[1]

On 14 April 1992, petitioners filed a Complaint[2] with the RTC of Cebu City for declaration of nullity of a mortgage deed and for damages, with an application for a temporary restraining order and/or injunction to prevent the foreclosure sale of the subject parcel of land. Petitioners alleged that on 27 October 1994, they mortgaged said parcel of land to Jocelyn "Joy" Sorensen (Sorensen), and that the mortgage deed imposed an exorbitant, unconscionable interest of five percent (5%) per month or sixty percent (60%) per annum.[3] Thereafter, petitioners filed an Amended Complaint,[4] alleging that the same parcel of land was earlier mortgaged to Felimon Suarez (Suarez) on 9 November 1993, but they were required to execute a deed of sale instead. They claimed that when the secured obligation had matured, Sorensen offered to help redeem the property and did pay the sum for such purpose, as well as the taxes involved. It was after such payment that petitioners executed the mortgage in favor of Sorensen.

During the course of the proceedings, Atty. Makilito Mahinay (Mahinay) filed a Motion to Intervene,[5] claiming that in an earlier case, Civil Case No. CEB-11086, he and petitioners entered into a compromise agreement wherein he was given the preferential right to buy the lot in issue in the event that petitioners decide to dispose of it. Later on, he discovered that petitioners executed a deed of sale over the same lot in favor of Suarez, thereby prompting him to file an action for specific performance against petitioners and Suarez. The subsequent action, docketed as Civil Case No. CEB-16335, was decided in Mahinay's favor, with the RTC finding that the contract between Suarez and petitioners was a sale and not an equitable mortgage, ruling that Mahinay is entitled to redeem the lot from Suarez, and ordering Suarez to execute a deed of conveyance and to transfer the lot to Mahinay for the same consideration as in the deed of sale between Suarez and petitioners. This decision was affirmed by the Court of Appeals and became final and executory on 8 February 2001.[6]

Petitioners and Sorensen opposed the motion for intervention, claiming that Suarez could not have sold the lot to Mahinay because Suarez had not purchased it and become its owner in the first place. Thereafter, Mahinay filed a motion for judgment on the pleadings, alleging that the answers failed to tender an issue.[7]

Petitioners then filed three motions, to wit: (1) Motion to Defer Motion for Judgment on the Pleadings, (2) Motion for Consolidation, and (3) Motion for Leave to File Third Party Complaint and Admit Third Party Complaint.[8]

In the first motion, they claimed that they were able to redeem the lot from Suarez long before the decision in Civil Case No. CEB-16335 had come out, thus rendering the aforementioned decision moot and academic. According to petitioners, such redemption is a supervening event which rendered the decision unenforceable. In the second motion, they argued that the determination of whether such redemption is a supervening event is a common issue in the case a quo and in Civil Case No. CEB-16335. In the third motion, petitioners claimed that there is a necessity to implead Suarez in order to preserve and protect their ownership over the lot.[9]

In the assailed 22 March 2002 Order,[10] the RTC found that the parties are bound by the finality of the decision in Civil Case No. CEB-16335, and that their posture that their transaction with Suarez is not a sale but a mortgage is an attempt to reopen an issue which has already been decided with finality. Anent the claim that the redemption of the lot in issue is a supervening event which rendered the decision moot and academic, the RTC held that it should have been raised in Civil Case No. CEB-16335 to precipitate the presentation of evidence on the matter, especially since the redemption allegedly occurred while the case was still pending. Based on these findings, the RTC denied the three motions. The dispositive portion of the Order reads:

Based on the foregoing findings, the Court finds no valid ground to grant the Motion for Judgment on the Pleadings, Motion to Defer Action on the Motion for Judgment on the Pleadings, Motion for Consolidation and Motion for Leave to File Third Party Complaint, etc, as they are hereby denied.

SO ORDERED.[11]

Petitioners filed a Motion for Reconsideration[12] but the same was denied by the RTC for lack of merit.

Petitioners went straight to this Court, through a petition under Rule 45 of the Rules of Court, presenting the following assignment of errors, to wit:

- The trial court erred in not allowing petitioners to file the third-party complaint against Felimon Suarez.
- The trial court erred in not consolidating Civil Case No. CEB-23653 [with Civil Case No. CEB 16335].
- The trial court erred in not granting petitioners' motion for reconsideration.[13]

The Order insofar as it denied Mahinay's motion for judgment on the pleadings is not challenged in this petition.

Petitioners maintain that the deed of sale between them and Suarez was a real estate mortgage founded on a loan,[14] and that assuming arguendo that they sold the lot to Suarez, ownership over the lot was eventually restored to them nevertheless since they were able to redeem the same in 1994.[15] They thus claim that the redemption of the lot was a *fait accompli* and that the RTC decision in Civil Case No. CEB-16335 has become *functus officio*. [16] As Suarez has never become the owner of the lot, he is not entitled to withdraw the amount deposited by Mahinay in accordance with the decision in Civil Case No. CEB-16335.[17]

In his Comment, Mahinay capitalizes on the holding of the trial court. He claims that petitioners' third-party complaint does not relate in any way to the subject matter in the complaint-in-intervention, and that petitioners merely want the reversal of the decision in Civil Case No. CEB-16335. In addition, he argues that the case a quo cannot be consolidated with Civil Case No. CEB-16335 since the latter case has long been terminated.[18]

For his part, Suarez admits that he executed a deed of conveyance in favor of Mahinay and had moved for the release of the cash bond posted by the latter. However, he abandoned the motion for release of the money when petitioners made him "recall"[19] that they have already redeemed the property from him and that he had already returned to them the Original Owner's Certificate of Title covering the property. He likewise admits that he received money from Sorensen for the redemption of the subject lot.[20]

Sorensen, on the other hand, claims that the instant petition in essence seeks to annul the decision in Civil Case No. CEB-16335, a decision which had already been affirmed by the Court of Appeals and for which an entry of judgment had already been issued. She adds that although she has claims against Suarez, it is doubtful whether it is still procedurally feasible to reopen Civil Case No. CEB-16335 considering that there is an entry of judgment.[21]

In their consolidated reply, petitioners assert that with Suarez's admission that they redeemed the subject lot, it follows that he had no more legal right over the said property when the decision in Civil Case No. CEB-16335 was rendered. Thus, said decision has no legal leg to stand on.[22] They insist that there is a common issue between the case a quo and in Civil Case No. CEB-16335, that is, whether the subject lot was repurchased by petitioners from Suarez.[23]

The petition must be denied.

Petitioners clearly erred in their choice of remedy. The instant petition, as described by petitioners' counsel, "is a petition for review on appeal by certiorari." [24] A petition for review under Rule 45 is the proper remedy to question final orders or judgments and not interlocutory orders. It is limited only to questions of law.[25] The 22 March 2002 Order of the RTC does not constitute a final order or judgment, but is an interlocutory order, for it did not rule on nor dismiss Civil Case No. CEB-23653. In denying petitioners' three (3) motions, the RTC merely resolved incidental matters and did not touch on the merits of the case nor put an end to the proceedings.[26]

Moreover, it is well-settled that a petition for certiorari under Rule 65, not Rule 45, is the proper remedy to question an allegedly improvident order or decision, such as the one in the instant case.[27]

However, even if petitioners filed a petition under Rule 65, the same will not prosper, since the same should have been filed with the Court of Appeals, following the doctrine of hierarchy of courts, which serves as a general determinant of the proper forum for the availment of the extraordinary remedy of certiorari. Considering that a special civil action of certiorari under Rule 65 is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, the petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts.

[28] Moreover, the petition does not impute the commission of a grave abuse of discretion amounting to lack or excess of jurisdiction to the lower court, which is the essential centerpiece of a Rule 65 petition.

Likewise, even if we treat this matter as a proper petition for certiorari under Rule 45, the petition must still fail. Petitioners raise no substantial question of law. Petitioners want the Court to reverse the Order of the RTC on the sole ground that the transaction between them and Suarez was one of real estate mortgage, and that they were able to redeem the subject lot. In other words, petitioners would have the Court reopen Civil Case No. CEB-16335, and make a re-evaluation of the facts pertaining to the true nature of petitioners' transaction with Suarez, a question which has long been ruled upon by the RTC by its holding that it is a sale and not a mortgage. Moreover, petitioners would like the Court to accept their claim that a redemption of the subject property had been made, a matter which should have been brought before the trial court which heard Civil Case No. CEB-16335.

It is not the function of this Court to re-examine the evidence submitted by the parties or analyze or weigh the evidence all over again. This Court is definitely not the proper venue to consider a factual issue as it is not a trier of facts.[29]

Petitioners attempt to revive the issues in Civil Case No. CEB-16335 by moving for the consolidation of the same with Civil Case No. CEB-23653. Under Section 1, Rule 31 of the Rules of Court, only pending actions involving

a common question of law or fact may be consolidated. Obviously, petitioners cannot make out a case for consolidation in this case since Civil Case No. CEB-16335, the case which petitioners seek to consolidate with the case a quo, has long become final and executory; as such it cannot be re-litigated in the instant proceedings without virtually impeaching the correctness of the decision in the other case. Public policy abhors such eventuality.

Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final the issue or cause involved therein should be laid to rest.[30] This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice.[31] In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[32] The decision in Civil Case No. CEB-16335 has long become final and executory. This Court finds no reason to disturb the same.

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Motion to Defer Motion for Judgment on the Pleadings, Motion for Consolidation, and Motion for Leave to File Third Party Complaint and Admit Third Party Complaint.

[2] Susan Honoridez, Josefina H. Lopez, and Constantina H. Sanchez v. Jocelyn "Joy" Sorensen and Husband (name unknown, Arthur Cabigon), docketed as Civil Case No. CEB-23653; Rollo, pp. 66-68.

[3] Rollo, p. 66.

[4] Id. at 95-97.

[5] Id. at 138-141.

[6] Id. at 51.

[7] Id. at 51.

[8] Id. at 179-184.

[9] Id. at 51-52.

[10] Id. at 50-56.

[11] Id. at 56.

[12] Id. at 57-58.

[13] Id. at 39.

[14] Id. at 42-43.

[15] Id. at 43.

[16] Id. at 44.

[17] Id. at 45.

[18] Id. at 254-269.

[19] Id. at 273.

[20] Id. at 272-275.

[21] Id. at 279-280.

[22] Id. at 285.

[23] Id. at 286.

[24] Id. at 26.

[25] Diesel Construction Company, Inc. v. Jollibee Food Corp., 380 Phil. 813, 823 (2000).

[26] Id. at 824.

[27] Diesel Construction Company, Inc. v. Jollibee Food Corp., *ibid*, citing BF Corporation v. EDSA Shangri-La Hotel & Resort, Inc., 294 SCRA 109, 117-118, 11 August 1998; David v. Court of Appeals, 276 SCRA 424, 430, 28 July 1997; Provident International Resources Corporation v. Court of Appeals, 259 SCRA 510, 522, 26 July 1996.

[28] Del Rosario, et al. v. Montaña, et al., G.R. No. 134433, 28 May 2004, 430 SCRA 109, 115-116, citations omitted.

[29] Moomba Mining Exploration Company v. Court of Appeals, 375 Phil. 818, 828 (1999).

[30] Reyes v. Court of Appeals, 332 Phil. 40, 53 (1996).

[31] Filcon Manufacturing Corp. v. National Labor Relations Commission, G.R. No. 78576, 31 July 1991, 199 SCRA 814.

[32] Dapar v. Biascan, G.R. No. 141880, 27 September 2004, 439 SCRA 179, citing Gallardo-Corro v. Gallardo, 350 SCRA 568 (2001).

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