

**JIMMY T. GO, PETITIONER, VS. UNITED COCONUT PLANTERS BANK,
ANGELO V. MANAHAN, FRANCISCO C. ZARATE, PERLITA A. URBANO
AND ATTY. EDWARD MARTIN, RESPONDENTS.**

G.R. No. 156187. November 11, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari[1] assailing the Decision[2] dated 31 July 2002 of the Court of Appeals in CA-G.R. SP No. 62625, the decretal portion of which reads:

WHEREFORE, the petition is GRANTED and the assailed orders dated June 7, 2000, August 9, 2000 and November 8, 2000 are SET ASIDE.

Respondent judge is directed to DISMISS Civil Case No. 67878 on the ground of improper venue.[3]

Petitioner Jimmy T. Go and Alberto T. Looyuko are co-owners of Noah's Ark International, Noah's Ark Sugar Carriers, Noah's Ark Sugar Truckers, Noah's Ark Sugar Repacker, Noah's Ark Sugar Insurers, Noah's Ark Sugar Terminal, Noah's Ark Sugar Building, and Noah's Ark Sugar Refinery.[4]

Sometime in August 1996, petitioner Jimmy T. Go and Alberto T. Looyuko applied for an Omnibus Line accommodation with respondent United Coconut Planters Bank (UCPB) in the amount of Nine Hundred Million (P900,000,000) Pesos,[5] and was favorably acted upon by the latter.

The transaction was secured by Real Estate Mortgages over parcels of land, covered by Transfer Certificate of Title (TCT) No. 64070, located at Mandaluyong City with an area of 24,837 square meters, and registered in the name of Mr. Looyuko; and TCT No. 3325, also located at Mandaluyong City with an area of 14,271 square meters, registered in the name of Noah's Ark Sugar Refinery.

On 21 July 1997, the approved Omnibus Line accommodation granted to petitioner was subsequently cancelled[6] by respondent UCPB. As a consequence, petitioner Jimmy T. Go demanded from UCPB the return of the two (2) TCTs (No. 64070 and No. 3325) covered by Real Estate Mortgages earlier executed. UCPB refused to return the same and proceeded to have the two (2) pre-signed Real Estate Mortgages notarized on 22 July 1997 and caused the registration thereof before the Registry of Deeds of Mandaluyong City on 02 September 1997.

On 15 June 1999, respondent UCPB filed with the Office of the Clerk of Court and Ex-Officio Sheriff of Mandaluyong City an extrajudicial foreclosure of real estate mortgage[7] covered by TCT No. 64070, for nonpayment of the obligation secured by said mortgage. As a result, the public auction sale of the mortgaged property was set on 11 April 2000 and 03 May 2000.

To protect his interest, petitioner Jimmy T. Go filed a complaint for Cancellation of Real Estate Mortgage and damages, with prayer for temporary restraining order and/or writ of preliminary injunction, against respondent bank and its officers, namely, Angelo V. Manahan, Francisco C. Zarate, Perlita A. Urbano and Atty. Edward E.

Martin, together with Ex-Officio Sheriff Lydia G. San Juan and Sheriff IV Helder A. Dyangco, with the Regional Trial Court of Pasig City, Branch 266, docketed as Civil Case No. 67878. The complaint was subsequently amended[8] on 22 May 2000. The amended complaint alleged, among other things, the following: that petitioner Jimmy T. Go is a co-owner of the property covered by TCT No. 64070, although the title is registered only in the name of Looyuko; that respondent bank was aware that he is a co-owner as he was asked to sign two deeds of real estate mortgage covering the subject property; that the approved omnibus credit line applied for by him and Looyuko did not materialize and was cancelled by respondent bank on 21 July 1997, so that the pre-signed real estate mortgages were likewise cancelled; that he demanded from respondent bank that TCTs No. 64070 and No. 3325 be returned to him, but respondent bank refused to do so; that despite the cancellation of the omnibus credit line on 21 July 1997, respondent bank had the two deeds of real estate mortgage dated and notarized on 22 July 1997 and caused the extrajudicial foreclosure of mortgage constituted on TCT No. 64070; that the auction sale scheduled on 11 April 2000 and 03 May 2000 be enjoined; that the two real estate mortgages be cancelled and TCTs No. 64070 and No. 3325 be returned to him; and that respondent bank and its officers be ordered to pay him moral and exemplary damages and attorney's fees.

On 07 June 2000, respondent bank, instead of filing an answer, filed a motion to dismiss[9] based on the following grounds: 1) that the court has no jurisdiction over the case due to nonpayment of the proper filing and docket fees; 2) that the complaint was filed in the wrong venue; 3) an indispensable party/real party in interest was not impleaded and, therefore, the complaint states no cause of action; 4) that the complaint was improperly verified; and 5) that petitioner is guilty of forum shopping and submitted an insufficient and false certification of non-forum shopping.

On 07 June 2000, the trial court issued an order[10] granting petitioner's application for a writ of preliminary injunction. Correspondingly, the auction sale, scheduled on 11 April 2000 and 03 May 2000, was enjoined.

On 09 August 2000, the trial court denied[11] respondent bank's motion to dismiss Civil Case No. 67878. A motion for reconsideration[12] was filed, but the same was likewise denied in an Order[13] dated 08 November 2000.

Respondent bank questioned said orders before the Court of Appeals via a petition for certiorari[14] dated 03 January 2001, alleging that the trial court acted without or in excess of jurisdiction or with grave abuse of discretion in issuing an order denying the motion to dismiss and the motion for reconsideration thereof.

On 31 July 2002, the Court of Appeals[15] set aside the Orders dated 07 June 2000, 09 August 2000 and 08 November 2000 issued by the trial court and directed the trial court to dismiss Civil Case No. 67878 on the ground of improper venue.

A motion for reconsideration was filed by petitioner,[16] which was denied in an order dated 14 November 2002.[17]

Hence, this petition for review on certiorari.[18]

On 16 June 2003, the Court gave due course to the petition, and required[19] the parties to file their respective memoranda. Respondents filed their Joint Memorandum on 27 August 2003, while petitioner filed his on 25 September 2003 upon prior leave of court for extension. With leave of this Court, private respondents filed their reply to petitioner's memorandum.

In his memorandum, petitioner raised a lone issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO APPLY THE LAW AND ESTABLISHED JURISPRUDENCE ON THE MATTER BY

ISSUING THE QUESTIONED RESOLUTIONS FINDING THAT THE CASE A QUO IS A “REAL ACTION.”

Simply put, the issue to be resolved in this case is whether petitioner’s complaint for cancellation of real estate mortgage is a personal or real action for the purpose of determining venue.

In a real action, the plaintiff seeks the recovery of real property, or as provided for in Section 1, Rule 4,[20] a real action is an action affecting title to or possession of real property, or interest therein. These include partition or condemnation of, or foreclosure of mortgage on, real property. The venue for real actions is the same for regional trial courts and municipal trial courts -- the court which has territorial jurisdiction over the area where the real property or any part thereof lies.[21]

Personal action is one brought for the recovery of personal property, for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.[22] The venue for personal actions is likewise the same for the regional and municipal trial courts -- the court of the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, at the election of the plaintiff, as indicated in Section 2 of Rule 4.[23]

It is quite clear then that the controlling factor in determining venue for cases of the above nature is the primary objective for which said cases are filed. Thus:

- In *Commodities Storage & Ice Plant Corp. v. Court of Appeals*,[24] this Court ruled that “an action to redeem by the mortgage debtor affects his title to the foreclosed property. If the action is seasonably made, it seeks to erase from the title of the judgment or mortgage debtor the lien created by registration of the mortgage and sale. If not made seasonably, it may seek to recover ownership to the land since the purchaser’s inchoate title to the property becomes consolidated after [the] expiration of the redemption period. Either way, redemption involves the title to the foreclosed property. It is a real action.”

- In *Fortune Motors, (Phils.), Inc., v. Court of Appeals*,[25] this Court quoting the decision of the Court of Appeals ruled that “since an extrajudicial foreclosure of real property results in a conveyance of the title of the property sold to the highest bidder at the sale, an action to annul the foreclosure sale is necessarily an action affecting the title of the property sold. It is therefore a real action which should be commenced and tried in the province where the property or part thereof lies.”

- In *Punsalan, Jr. v. Vda. de Lacsamana*,[26] this court ruled that “while it is true that petitioner does not directly seek the recovery . . . of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner’s primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action. Respondent Court, therefore, did not err in dismissing the case on the ground of improper venue which was timely raised.”

- In *Ruiz v. J. M. Tuason Co., Inc., et al.*,[27] the court ruled that “although [a] complaint is entitled to be one for specific performance, yet the fact that [complainant] asked that a deed of sale of a parcel of land . . . be issued in his favor and that a transfer certificate of title covering said land be issued to him, shows that the primary objective and nature of the action is to recover the parcel of land itself because to execute in favor of complainant the conveyance requested there is need to make a finding that he is the owner of the land which in the last analysis resolves itself into an issue of ownership. Hence, the action must be commenced in the province where the property is situated”

- In *Dr. Antonio A. Lizares, Inc. v. Hon. Hermogenes Caluag*,[28] this Court ruled that “an action praying that

defendant be ordered 'to accept the payment being made' by plaintiff for the lot which the latter contracted to buy on installment basis from the former, to pay plaintiff compensatory damages and attorney's fees and to enjoin defendant and his agents from repossessing the lot in question, is one that affects title to the land under Section 3 of Rule 5, of the Rules of Court, and 'shall be commenced and tried in the province where the property or any part thereof lies,' because, although the immediate remedy is to compel the defendant to accept the tender of payment allegedly made, it is obvious that this relief is merely the first step to establish plaintiff's title to [the] real property."

- In *Land Tenure Administration, et al. v. The Honorable Higinio B. Macadaeg and Alejandro T. Lim*,^[29] this Court ruled that "where the lessee seeks to establish an interest in an hacienda that runs with the land and one that must be respected by the purchaser of the land even if the latter is not a party to the original lease contract, the question of whether or not the standing crop is immovable property become[s] irrelevant, for venue is determined by the nature of the principal claim. Since the lessee is primarily interested in establishing his right to recover possession of the land for the purpose of enabling him to gather his share of the crops, his action is real and must be brought in the locality where the land is situated."

- In *Espineli & Mojica v. Hon. Santiago and Vda. de Ramirez*,^[30] the court ruled that "although the main relief sought in the case at bar was the delivery of the certificate of title, said relief, in turn, entirely depended upon who, between the parties, has a better right to the lot in question. As it is not possible for the court to decide the main relief, without passing upon the claim of the parties with respect to the title to and possession of the lot in question, the claim shall be determined x x x in the province where [the] said property or any part thereof lies."

The case of *Carandang v. Court of Appeals*,^[31] is more particularly instructive. There, we held that an action for nullification of the mortgage documents and foreclosure of the mortgaged property is a real action that affects the title to the property. Thus, venue of the real action is before the court having jurisdiction over the territory in which the property lies, which is the Court of First Instance of Laguna.

Petitioner in this case contends that a case for cancellation of mortgage is a personal action and since he resides at Pasig City, venue was properly laid therein. He tries to make a point by alluding to the case of *Francisco S. Hernandez v. Rural Bank of Lucena*.^[32]

Petitioner's reliance in the case of *Francisco S. Hernandez v. Rural Bank of Lucena*^[33] is misplaced. Firstly, said case was primarily an action to compel the mortgagee bank to accept payment of the mortgage debt and to release the mortgage. That action, which is not expressly included in the enumeration found in Section 2(a) of Rule 4 of the Old Civil Procedure and now under Section 1, Rule 4 of the 1997 Rules of Civil Procedure, does not involve titles to the mortgaged lots. It is a personal action and not a real action. The mortgagee has not foreclosed the mortgage. The plaintiffs' title is not in question. They are in possession of the mortgaged lots. Hence, the venue of the plaintiffs' personal action is the place where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff. In the case at bar, the action for cancellation of real estate mortgage filed by herein petitioner was primarily an action to compel private respondent bank to return to him the properties covered by TCTs No. 64070 and No. 3325 over which the bank had already initiated foreclosure proceedings because of the cancellation by the said respondent bank of the omnibus credit line on 21 July 1997. The prime objective is to recover said real properties. Secondly, *Carandang* distinctly articulated that the ruling in *Hernandez* does not apply where the mortgaged property had already been foreclosed. Here, and as correctly pointed out by the appellate court, respondent bank had already initiated extrajudicial foreclosure proceedings, and were it not for the timely issuance of a restraining order secured by petitioner Go in the lower court, the same would have already been sold at a public auction.

In a relatively recent case, *Asset Privatization Trust v. Court of Appeals*,^[34] it was succinctly stated that the

prayer for the nullification of the mortgage is a prayer affecting real property, hence, is a real action.

In sum, the cancellation of the real estate mortgage, subject of the instant petition, is a real action, considering that a real estate mortgage is a real right and a real property by itself.[35] An action for cancellation of real estate mortgage is necessarily an action affecting the title to the property. It is, therefore, a real action which should be commenced and tried in Mandaluyong City, the place where the subject property lies.

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed decision dated 31 July 2002 and the Order dated 14 November 2002 denying the motion for reconsideration are hereby AFFIRMED. With costs.

SO ORDERED.

Austria-Martinez, (Acting Chairman), and Callejo, Sr., JJ., concur.

Puno, (Chairman), J., on official leave.

Tinga, J., on leave.

[1] Rollo, pp. 9-37.

[2] Records, pp. 704-714; penned by Justice Marina L. Buzon, with Acting Presiding Justice Cancio C. Garcia and Justice Eliezer R. de los Santos, concurring.

[3] Rollo, p. 714.

[4] Records, pp.177-179, Agreement dated 10 October 1986.

[5] Rollo, p. 19.

[6] Records, p. 161.

[7] Records, pp. 101-109.

[8] Records, pp. 110-122.

[9] Records, pp. 189-208.

[10] Records, pp. 82-84.

[11] Records, pp. 76-80.

[12] Records, pp. 426-451.

[13] Records, p. 81.

[14] Records, pp. 2-75.

[15] Records, pp. 704-714.

[16] Records, pp. 721-731.

[17] Records, p. 746.

[18] Rollo, pp. 9-37.

[19] Rollo, p. 440.

[20] 1997 Revised Rules of Court.

- [21] Emergency Loan Pawnshop Incorporated v. Court of Appeals, G.R. No. 129184, 28 February 2001, 353 SCRA 89.
- [22] Philippine Law Dictionary, Second Edition, p. 456, citing Hernandez v. Development Bank of the Philippines, G.R. No. L-31095, 18 June 1976, 71 SCRA 290.
- [23] 1997 Revised Rules of Court.
- [24] G.R. No. 125008, 19 June 1997, 274 SCRA 439, 450.
- [25] G.R. No. 76431, 16 October 1989, 178 SCRA 564, 568-569.
- [26] G.R. No. L-55729, 28 March 1983, 121 SCRA 331, 336.
- [27] G.R. No. L-18692, 31 January 1963, 7 SCRA 202, cited in Torres v. M. Tuason & Co., Inc., G.R. No. L-19668, 22 October 1964, 12 SCRA 174, 177.
- [28] G.R. No. L-17699, 30 March 1962, 4 SCRA 746.
- [29] 107 Phil 83 (1960).
- [30] 107 Phil 830 (1960).
- [31] G.R. No. L-44932, 15 April 1988, 160 SCRA 266.
- [32] G.R. No. L-29791, 10 January 1978, 81 SCRA 75.
- [33] Ibid.
- [34] G.R. No. 81024, 03 February 2000, 324 SCRA 533.
- [35] Metropolitan Bank & Trust Company v. Alejo, G.R. No. 141930, 10 September 2001, 364 SCRA 812.

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