

HERMINIA CANDO, PETITIONER, VS. SPS. AURORA OLAZO AND CLAUDIO OLAZO, RESPONDENTS.

G.R. NO. 160741. March 22, 2007

Ponente: TINGA, J.

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TINGA, J.:

The instant petition for review assails the Decision of the Court of Appeals dated 13 November 2003 in CA G.R. CV No. 61151 captioned "Herminia Cando v. Spouses Aurora Olazo and Claudio Olazo." [1]

The facts of the case are not disputed.

On 27 April 1987, Aurora and Claudio Olazo (respondents) mortgaged to Herminia Cando (petitioner) a parcel of land with improvements thereon to secure the payment of their P240,000.00 loan. The real estate mortgage was embodied in a written instrument titled "Mortgage of Realty." In the said instrument, the parties agreed that should the mortgagors fail to pay the loan within one (1) year from the date of the execution of the document, the mortgage shall be foreclosed.

Alleging that respondents failed to pay their obligation within the prescribed period despite demands, petitioner filed a complaint for judicial foreclosure of mortgage before the Regional Trial Court of Olongapo City on 16 February 1998. [2] Respondents moved for the dismissal of the complaint, arguing that the action for foreclosure of the mortgage has already prescribed; that petitioner is barred from filing the complaint under the principle of laches; and that respondents have already paid the mortgage obligation.

On 25 May 1998, the trial court issued an Order which reads:

Acting on the Motion to Dismiss on the ground that the Action to Foreclose Mortgage of Realty dated April 27, 1987 has prescribed in accordance with Article 1142 of the Civil Code "that the action for foreclosure of mortgage prescribes after ten (10) years" and it appearing that this Complaint was filed on February

16, 1998 after the expiration of the said period, this case is hereby DISMISSED.

SO ORDERED. [3]

Petitioner sought reconsideration of the Order but her motion was denied by the trial court, [4] prompting her to appeal the case before the Court of Appeals.

In her brief as appellant, [5] petitioner interposed a lone assignment of error, to wit:

THE LOWER COURT HAD CLEARLY ERRED IN DISMISSING THE PLAINTIFF'S COMPLAINT IN THE INSTANT CASE ON THE GROUND OF PRESCRIPTION OF ACTION. [6]

The appellate court dismissed the appeal on the ground of lack of jurisdiction. It found that the issue raised in the appeal is a pure question of law, that is, what is the proper computation of the ten (10) year prescriptive period for filing an action for foreclosure of mortgage. According to the Court of Appeals, the dismissal was based on Sec.

2, Rule 50 of the Rules of Civil Procedure which provides that an appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed.[7]

In the present petition for review under Rule 45, petitioner claims that the Court of Appeals erred in holding that her action to enforce the mortgage obligation had already prescribed. She posits that the ten (10) year period for foreclosure of the mortgaged property must be counted from the time the stipulated one (1) year period within which to pay the loan elapsed. Thus, it should be reckoned from 27 April 1988, and not 27 April 1987, or the date of the mortgage instrument.[8] Petitioner thus prays that the Decision of the Court of Appeals be reconsidered and/or set aside and the case remanded to the court of origin for further proceedings.

On the other hand, respondents point out that the petition is a mere rehash of the issues and arguments raised and resolved by the lower court and the Court of Appeals. They insist that the ten (10) year period for foreclosure is counted from the date of the execution of the mortgage deed.[9]

The trial court's dismissal of the complaint for judicial foreclosure of mortgage is a final order which terminated the litigation of the case and left nothing more to be done by the lower court. Petitioner had no more remedy but to appeal the order of dismissal.

There are two modes of appeal from a final order of the trial court in the exercise of its original jurisdiction'(1) by writ of error under Section 2(a), Rule 41 of the Rules of Court if questions of fact or questions of fact and law are raised or involved; or (2) appeal by certiorari under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.[10] If the aggrieved party appeals via a writ of error under Rule 41, but it turns out that only questions of law are raised, the appeal shall be dismissed.[11]

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.[12]

The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[13]

Admittedly, petitioner's appeal entailed a lone assignment of error, which turned out be a pure question of law. The appellate court can easily determine the plausibility of the trial court's conclusion that the ten (10) year prescriptive period for an action for foreclosure of mortgage should be computed from the date of the deed of mortgage without reviewing or evaluating the evidence, but of course with due regard to the governing case law on the matter. A strict adherence to the rules leads us to the conclusion that the Court of Appeals is correct in dismissing the appeal on the ground of lack of jurisdiction. However, equity considerations behoove a different course of action.

Even from a cursory reading of the appeal, it is indelibly clear that the trial court committed an appalling blunder when it ruled that an action for foreclosure of mortgage prescribes after ten (10) years from the date of the mortgage contract. Under Article 1142 of the Civil Code, a mortgage action prescribes after ten (10) years. Jurisprudence, however, has clarified this rule by holding that a mortgage action prescribes after ten (10) years from the time the right of action accrued,[14] which is obviously not the same as the date of the mortgage contract. Stated differently, an action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues; otherwise, it will be barred by prescription and the mortgage creditor will lose his rights under the mortgage.[15] The right of action accrues when the mortgagor defaults in the payment of his obligation to the mortgagee.[16]

The foregoing basic principles must have been unknown to the trial court when it reached its erroneous conclusion that the action to foreclose the mortgage covered by the "Mortgage of Realty dated April 27, 1987 has prescribed in accordance with Article 1142 of the Civil Code which provides that "the action for foreclosure of mortgage prescribes after ten (10) years' and it appearing that this Complaint was filed on February 16, 1998 after the expiration of the said period x x x. "[17]

The dismissal of the appeal by the appellate court would have put the instant case to rest. Yet if the Court will affirm the appellate court's dismissal of the case and disregard the error of the trial court, great injustice and undue prejudice will be caused petitioner.

We have ruled time and again that litigants should have the amplest opportunity for a proper and just disposition of their cause-free, as much as possible, from the constraints of procedural technicalities. In the interest of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits. Rules of procedure should promote, not defeat, substantial justice. Hence, the Court may opt to apply the Rules liberally to resolve substantial issues raised by the parties.[18]

Rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided.[19]

In the instant case, the strict adherence to the rules will definitely cause injustice to petitioner since the erroneous conclusion of the trial court will bar her from pursuing her right of action against respondents, assuming that the latter really failed to pay their obligation within the prescribed period.

If procedural lapses on the part of the litigants are sometimes overlooked by the Court in the interest of justice, with all the more reason will the Court overlook these rules when the injustice will be compounded by the error of the courts below. Ultimately, the interest of substantial justice must transcend rigid observance of the rules of procedure. We cannot allow the trial court's egregious error to perpetuate simply because petitioner had pursued the wrong recourse or erred in drafting her appeal.

WHEREFORE, the petition is GRANTED and the assailed Decision dated 13 November 2003 of the Court of Appeals is hereby

REVERSED. Let the case be REMANDED to the Regional Trial Court of Olongapo City for further proceedings with deliberate dispatch.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Sergio Pestano and Jose C. Mendoza concurring.

[2] The case was raffled to Branch 72, Third Judicial Region, Olongapo City.

[3] Rollo, p. 31.

[4] Order dated 14 July 1998; id. at 34.

[5] Appellant's Brief; id. at 36-43.

[6] Id. at 37.

[7] Id. at 55-60.

[8] Petition; id. at 8-13.

[9] Comment; id. at 75-79.

[10] First Bancorp, Inc. v. Court of Appeals, G.R. No. 151132, 22 June 2006, 492 SCRA 221, 235.

[11] RULES OF COURT, Rule 50, Sec. 2. Dismissal of improper appeal to the Court of Appeals.-An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

[12] Barcenas v. Tomas, G.R. No. 150321, 31 March 2005, 454 SCRA 593, 606.

[13] Crisologo v. Globe Telecom, Inc., G.R. No. 167631, 16 December 2005, 478 SCRA 433, 441, citing China Road and Bridge Corporation v. Court of Appeals, G.R. No. 137898, 15 December 2000, 348 SCRA 401, 411.

[14] Quirino Gonzales Logging Concessionaire v. Court of Appeals, 450 Phil. 218, 229 (2003).

[15] Tambunting, Jr. v. Sumabat, G.R. No. 144101, 16 September 2005, 470 SCRA 92, 97.

[16] Tambunting, Jr. v. Sumabat, G.R. No. 144101, 16 September 2005, 470 SCRA 92.

[17] Order dated 25 May 1998; Annex "C," rollo, p. 31.

[18] Durban Apartments Corporation v. Catacutan, et al., G.R. No. 167136, 14 December 2005, 477 SCRA 801, 808.

[19] Id. at 809.

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