

KKK FOUNDATION, INC., PETITIONER, VS. HON. ADELINA CALDERON-BARGAS, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 78 OF MORONG, RIZAL, SHERIFF IV SALES ...

G.R. No. 163785. December 27, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner urges this Court to reverse and set aside the Decision[1] dated November 28, 2003, and the Resolution[2] dated May 26, 2004, of the Court of Appeals in CA-G.R. SP No. 73965.

The antecedent facts are as follows:

On March 1, 2002, petitioner KKK Foundation, Inc. filed a complaint for Annulment of Extra-judicial Foreclosure of Real Estate Mortgage and/or Nullification of Sheriff's Auction Sale and Damages with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[3] Petitioner alleged that: (1) the auction sale was made with fraud and/or bad faith since there was no public bidding; (2) the sheriff did not post the requisite Notice of Sheriff's Sale; (3) the petition for extrajudicial foreclosure was fatally defective since it sought to foreclose properties of two different entities; (4) the foreclosed properties were awarded and sold to Imelda A. Angeles for an inadequate bid of only P4,181,450; and (5) the auction sale involved eight parcels of land covered by individual titles but the same were sold en masse.

On March 7, 2002, Judge Adelina Calderon-Bargas issued a temporary restraining order preventing Angeles from consolidating her ownership to the foreclosed properties. On even date, petitioner and Angeles executed a Compromise Agreement wherein petitioner agreed to pay Angeles the bid price of the eight parcels of land within 20 days. The parties then filed a Motion to Approve Compromise Agreement.[4]

On April 1, 2002, petitioner filed an Urgent Ex-Parte Motion to Recall Compromise Agreement[5] since the other property owner and other trustees of petitioner were not consulted prior to the signing of the agreement. Angeles opposed the motion.

On May 2, 2002, Judge Calderon-Bargas issued an Order,[6] which reads in part:

x x x x

Record shows that the Urgent Ex-Parte Motion to Recall Compromise Agreement and Motion to Approve Compromise Agreement both failed to comply with Sec[s]. 4 and 5, Rule 15 of the Civil Procedure. Both proceedings have no specific date of hearing. The reason why the Motion to Approve Compromise Agreement up to now has not yet been acted upon was that it has no date of hearing.

WHEREFORE, the Urgent Ex-Parte Motion to Recall Compromise Agreement and the Motion to [Approve]

Compromise Agreement are considered mere scrap[s] of paper.

SO ORDERED.

In its Decision[7] dated June 28, 2002, the trial court approved the Compromise Agreement, as follows:

The parties, duly assisted by their respective counsels, submitted before this Court a Compromise Agreement, as follows:

x x x x [1.] The plaintiff shall pay to the defendant, Imelda Angeles, the amount of P5,500,000.00 representing the bid price for all the eight titles (TCT Nos. M-95417, 95419, 95418, 95420, 95421, 50889, 50890 and 50893) subject of the auction sale dated March 7, 2001 plus whatever taxes [and/or] assessments and expenses of the public auction as prescribed under Act 3135, within twenty (20) days from the signing of this compromise agreement. Said payment shall be considered full settlement of all obligations stated under that Real Estate Mortgage, dated July 15, 1997...and that Deed of Assumption of Mortgage dated August 11, 1999....

2. Upon the payment of the afore-stated amount, the defendant shall make, sign, execute and deliver to the plaintiff a Certificate of Deed of Redemption of all the above titles, and shall surrender and deliver to the plaintiff all the eight titles mentioned above. The defendant shall also make, sign, execute and deliver to the plaintiff a Deed of Cancellation of Mortgage annotated at the back of all the eight titles above-mentioned. The defendant shall also return to the plaintiff all checks issued by the plaintiff to the defendant as payment of its obligations.

x x x x

Finding the Compromise Agreement quoted above to be not contrary to law, morals, good customs and public policy, the same is hereby APPROVED.

x x x x

Angeles then moved for the issuance of a writ of execution. On September 9, 2002, the trial court required petitioner to comment on the motion within ten (10) days.[8] On October 3, 2002, the trial court directed the Clerk of Court to issue a writ of execution.[9] On the same date, the trial court received petitioner's Motion for Extension of Time to File Comment with Entry of Appearance which was denied on October 10, 2002.[10] Petitioner then moved for reconsideration of the October 3, 2002 Order.

Petitioner came to the Court of Appeals via petition for certiorari alleging that Judge Calderon-Bargas committed grave abuse of discretion amounting to lack or excess of jurisdiction when: (1) she issued the October 3, 2002 and the October 10, 2002 Orders even before petitioner could file its comment; (2) she granted the Motion for Issuance of Writ of Execution although it lacked the requisite notice of hearing; and (3) the writ of execution changed the tenor of the decision dated June 28, 2002.

In dismissing the petition, the appellate court ruled that petitioner was not deprived of due process when the trial court issued the October 3, 2002 and the October 10, 2002 Orders since it was given sufficient time to file its comment. The appellate court did not rule on the second and third issues after noting that petitioner's motion for reconsideration of the October 3, 2002 Order had not yet been resolved by the trial court. It did not resolve the issues even after the trial court denied petitioner's motion for reconsideration on December 12, 2003,[11] ratiocinating that the trial court's denial of petitioner's motion for reconsideration did not operate to reinstate the petition because at the time it was filed, petitioner had no cause of action.

In the instant petition before us, petitioner alleges that the appellate court seriously erred:

I.

... IN NOT HOLDING THAT PETITIONER WAS DENIED THE REQUISITE PROCEDURAL DUE PROCESS WHEN PUBLIC RESPONDENT ISSUED THE QUESTIONED ORDERS OF OCTOBER 3, 2002 AND OCTOBER 10, 2002 EVEN BEFORE PETITIONER COULD FILE ITS COMMENT AND IN FURTHER ISSUING THE WRIT OF EXECUTION EVEN BEFORE THE RESOLUTION OF THE PETITIONER'S MOTION FOR RECONSIDERATION OF THE ORDER OF OCTOBER 3, 2002.

II.

... IN NOT HOLDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT GRANTED PRIVATE RESPONDENT'S MOTION FOR ISSUANCE OF WRIT OF EXECUTION ALTHOUGH THE SAME WAS FILED WITHOUT AN ACCOMPANYING NOTICE OF HEARING.

III.

... IN NOT HOLDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT EVEN ASSUMING THAT THE DECISION RENDERED IN ACCORDANCE WITH THE COMPROMISE AGREEMENT IS VALID AND BINDING UPON THE PETITIONER, THE WRIT OF EXECUTION ISSUED PURSUANT THERETO IS VOID AS IT VARIES THE TENOR OF THE JUDGMENT.[12]

Simply, the issues are whether the trial court seriously erred: (1) in issuing the October 3, 2002 and the October 10, 2002 Orders without awaiting petitioner's comment; (2) in granting the Motion for Issuance of Writ of Execution although it lacked the requisite notice of hearing; and (3) in issuing the writ of execution since it varied the tenor of the decision dated June 28, 2002.

Petitioner contends that it was denied due process when the trial court granted Angeles's Motion for Issuance of Writ of Execution on October 3, 2002, despite its receipt of petitioner's Motion for Extension of Time to File Comment with Entry of Appearance on the same day. Further, Sheriff Sales T. Bisnar served upon petitioner the Notice to Settle and/or Pay the Compromise Judgment Amount although its motion for reconsideration of the October 3, 2002 Order was still pending. Petitioner also argues that Angeles's Motion for Issuance of Writ of Execution lacked the requisite notice of hearing. Finally, petitioner claims that the writ of execution varied the tenor of the decision dated June 28, 2002.

Respondent Angeles counters that petitioner was not denied due process since it was given ten (10) days to comment on the Motion for Issuance of Writ of Execution which period had lapsed without petitioner filing any comment. Petitioner filed its Motion for Extension of Time to File Comment with Entry of Appearance only after the reglementary period had expired. Angeles further contends that the Motion for Issuance of Writ of Execution contained the requisite notice of hearing. Finally, she argues that the writ of execution did not vary the tenor of the decision dated June 28, 2002.

On the first issue, we note that in its September 9, 2002 Order, the trial court gave petitioner ten (10) days to file its comment to Angeles's Motion for Issuance of Writ of Execution. While petitioner claims that it received the Order only on September 21, 2002, Angeles counters that petitioner received it on September 12, 2002. We are more inclined to believe Angeles's allegation since the trial court itself declared in its Order dated October 10, 2002 that the Order dated September 9, 2002 was personally served upon petitioner on September 12, 2002.[13] Thus, petitioner had until September 22, 2002 within which to file its comment or to request for an extension of time. Consequently, petitioner's motion for extension and comment were not seasonably filed and such procedural lapse binds petitioner.

Anent the second issue, we have consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15[14] of the Rules of Court is considered a worthless piece of paper, which the Clerk of Court has no right to receive and the trial court has no authority to act upon. [15] Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. However, there are exceptions to the strict application of this rule. These exceptions are: (1) where a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[16]

A notice of hearing is an integral component of procedural due process to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is given time to study and answer the arguments in the motion.[17] Records show that while Angeles's Motion for Issuance of Writ of Execution contained a notice of hearing, it did not particularly state the date and time of the hearing. However, we still find that petitioner was not denied procedural due process. Upon receiving the Motion for Issuance of Writ of Execution, the trial court issued an Order dated September 9, 2002 giving petitioner ten (10) days to file its comment. The trial court ruled on the motion only after the reglementary period to file comment lapsed. Clearly, petitioner was given time to study and comment on the motion for which reason, the very purpose of a notice of hearing had been achieved.

The notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanical and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding.[18]

On the last issue, we note that the Compromise Agreement approved by the trial court in its Decision dated June 28, 2002 merely provided that petitioner would pay Angeles the bid price of P5,500,000, for the eight parcels of land subject of the auction sale, within twenty (20) days. Upon payment, Angeles would execute a Certificate of Deed of Redemption and a Deed of Cancellation of Mortgage, and surrender to petitioner the titles to the eight parcels of land. Nevertheless, when the trial court issued the writ of execution, the writ gave Sheriff Bisnar the option "to allow the consolidation of the subject real properties in favor of the defendant Imelda Angeles." [19]

Undoubtedly, the writ of execution imposed upon petitioner an alternative obligation which was not included or contemplated in the Compromise Agreement. While the complaint originally sought to restrain Angeles from consolidating her ownership to the foreclosed properties, that has been superseded by the Compromise Agreement. Therefore, the writ of execution which directed Sheriff Bisnar to "cause the Register of Deeds of Morong, Rizal, to allow the consolidation of the subject real properties in favor of the defendant Imelda Angeles" is clearly erroneous because the judgment under execution failed to provide for consolidation.

Because the writ of execution varied the terms of the judgment and exceeded them, it had no validity. The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Neither may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity.[20]

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated November 28, 2003 and the Resolution dated May 26, 2004 of the Court of Appeals in CA-G.R. SP No. 73965 are **MODIFIED** such that the

writ of execution issued on October 11, 2002 by Judge Adelina Calderon-Bargas is declared NULL and VOID.

Let this case be REMANDED to the Regional Trial Court of Morong, Rizal, Branch 78, which is hereby ORDERED to issue another writ of execution against petitioner KKK Foundation, Inc., in conformity with the Decision dated June 28, 2002 of the trial court. This is without prejudice to filing a new motion for consolidation by respondent Angeles.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 130-136. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Amelita G. Tolentino and Arturo D. Brion concurring.

[2] Id. at 163-164.

[3] CA rollo, pp. 26-37.

[4] Id. at 38-39.

[5] Id. at 40-41.

[6] Id. at 50.

[7] Id. at 51-53.

[8] Id. at 58.

[9] Id. at 61-62.

[10] Id. at 78.

[11] Id. at 200-201.

[12] Rollo, pp. 16-17.

[13] CA rollo, p. 78.

[14] SEC. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[15] *Pallada v. Regional Trial Court of Kalibo, Aklan*, Br. 1, G.R. No. 129442, March 10, 1999, 304 SCRA 440, 446.

[16] *Vlason Enterprises Corporation v. Court of Appeals*, G.R. Nos. 121662-64, July 6, 1999, 310 SCRA 26, 53-54.

[17] Id. at 54.

[18] Id. at 55.

[19] CA rollo, p. 82.

[20] Windor Steel Mfg. Co., Inc. v. Court of Appeals, No. L-34332, January 27, 1981, 102 SCRA 275, 283-284; See Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corporation, G.R. No. 163663, June 30, 2006, 494 SCRA 280, 297.

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