

LIGAYA S. ORBETA, REPRESENTED BY HER ATTY.-IN-FACT, RUBEN S. ORBETA, JR., PETITIONER, VS. RUBEN P. ORBETA AND ANITA B. WOLCOTT, RESPONDENTS.

G.R. NO. 166837. November 27, 2006

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-166837/>

TINGA, J.:

In this Petition for Review on Writ of Certiorari[1] dated February 9, 2005, Ligaya Orbeta assails the Order[2] dated January 21, 2005 of the Regional Trial Court (RTC), Branch 255, Las Piñas City, which dismissed her Complaint for Annulment of Deed of Mortgage with Damages on the ground that the venue was improperly laid.

The records disclose the following facts:

Petitioner and respondent Ruben Orbeta are lawfully married and are co-owners of a 455-square meter parcel of land located in Pililla, Rizal and covered by Transfer Certificate of Title No. (236938) M-26683.[3] The couple later became estranged and in 1994, petitioner left for the United States. When petitioner came back to the Philippines on January 29, 2003, she learned that her estranged husband obtained a loan in the amount of P200,000.00 from respondent Anita B. Wolcott (Wolcott) and used the subject property as collateral.

She then filed a Complaint for Annulment of Deed of Mortgage with Damages[4] in the RTC of Las Piñas City, claiming that she never consented to the execution of the deed and that her signature thereon was forged. According to petitioner, she was not in the Philippines on the date the deed was executed on January 6, 2003.

Respondents filed a Motion to Dismiss,[5] alleging that the complaint involved a real action and should have been filed in the court which has jurisdiction over the area where the real property is situated. Moreover, the complaint was allegedly filed in violation of Article (Art.) 222 of the Civil Code which mandates that earnest efforts toward a compromise should have been made and failed before a suit can be filed or maintained between members of the same family.

Petitioner filed an Opposition,[6] arguing that the nullification of the Deed of Mortgage partakes of the nature of a personal action. Moreover, Art. 222 of the Civil Code is inapplicable because respondent Wolcott is not a member of the family.

The parties filed their Reply to Opposition[7] and Rejoinder[8] to bolster their respective positions. Thereafter, the trial court dismissed the Complaint on the ground that venue was improperly laid.

In this petition, Ligaya Orbeta insists that her Complaint does not affect title to or possession of the subject property but is hinged on respondents' liability for damages for having made it appear that she consented to the execution of the Deed of Mortgage when she did not.

In their Comment dated April 18, 2005, respondents assert that the prayer in petitioner's Complaint seeks the annulment of the Deed of Mortgage. Citing *Carandang v. CA*,[9] they claim that an action for nullification of

mortgage documents is a real action as it affects title to property. They also point out that as co-owner of the subject property, respondent Ruben Orbeta has the right to dispose of the portion belonging to him. To this extent, respondent Wolcott's interest as mortgagee cannot be discounted because Sec. 1, Rule 4 of the 1997 Rules of Civil Procedure (Rules of Court) defines real actions as those affecting title to or possession of real property, or an interest therein.

Petitioner filed a Reply^[10] dated May 3, 2005, averring that *Carandang v. CA* does not apply because there is as yet no foreclosure of the mortgage in this case. In contrast, the subject property in *Carandang v. CA* was already foreclosed extrajudicially. According to petitioner, the applicable case is *Hernandez v. Rural Bank of Lucena, Inc.*^[11] wherein no foreclosure of the mortgage was made and the property remained in the possession of the mortgagor. Petitioner also asserts that Wolcott's interest in the property is at best inchoate because the property has not yet been foreclosed.

The sole issue presented for our review is the proper characterization of the nature of the action filed by petitioner, i.e., whether her Complaint for Annulment of Deed of Mortgage with Damages is a real action or a personal action.

A real action, under Sec. 1, Rule 4 of the Rules of Court, is one that affects title to or possession of real property, or an interest therein. Such actions should be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. All other actions are personal and may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.^[12]

We agree with petitioner that the case of *Hernandez v. Rural Bank of Lucena* is applicable. That case was primarily an action to compel the mortgagee bank to accept payment of the mortgage debt and to release the mortgage. No foreclosure of mortgage took place and the plaintiffs remained in possession of the mortgaged lot. The Court ruled that an action for cancellation of a real estate mortgage is a personal action since it is not expressly included in the enumeration found in Sec. 2(a), Rule 4 of the Revised Rules of Court.^[13]

Similarly, the property subject of the Deed of Mortgage in this case has not been foreclosed. There is no indication that respondent Ruben Orbeta has defaulted in the payment of the loan secured by the mortgage on the subject property. Petitioner even asserts, without objection from respondents, that the title to the property is still in her and respondent Ruben Orbeta's names and that they are still in possession of the property.

The recent case of *Chua v. Total Office Products and Services (Topros), Inc.*,^[14] penned by Associate Justice Leonardo A. Quisumbing, also provides a proper precedent. In that case, respondent filed a complaint for the declaration of nullity of a loan contract for lack of consent and consideration. It contended that the purported loan and real estate mortgage contracts were fictitious since it never authorized anybody to enter into said transactions and that the complaint remained a personal action even if it will necessarily affect the accessory real estate mortgage.

The allegations of respondent in that case strikingly resemble petitioner's arguments in this case. Notably, petitioner herein also seeks the annulment of the Deed of Mortgage executed by the respondents on the grounds that she never gave her consent to the execution of the deed and that her signature thereon was forged.

Given this similarity in factual milieu, we cannot but apply the Court's ruling in *Chua v. Total Office Products and Services (Topros), Inc.* that an action to annul a contract of loan and its accessory real estate mortgage is a personal action. In accordance with Sec. 2, Rule 4 of the Rules of Court, Las Piñas City, where respondent

Wolcott resides, is the proper venue of the Complaint for Annulment of Deed of Mortgage with Damages.

WHEREFORE, the instant petition is GRANTED. The Order dated January 21, 2005 of the Regional Trial Court, Branch 255, Las Piñas City is hereby SET ASIDE. The case is REMANDED to the trial court for further proceedings. No pronouncement as to costs.

SO ORDERED.

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

[1]Rollo, pp. 3-8.

[2]Id. at 12-13; Penned by Judge Raul Bautista-Villanueva.

[3] Records, p. 7.

[4] Id. at 2-5.

[5] Id. at 28-29.

[6]Id. at 41-43.

[7]Id. at 50-52.

[8]Id. at 54-57.

[9]G.R. No. L-44932, April 15, 1988, 160 SCRA 266.

[10] Rollo, pp. 19-22.

[11] G.R. No. L-29791, January 10, 1978, 81 SCRA 75.

[12] RULES OF COURT, Rule 4, Sec. 2.

[13] The cited rule provided that real actions are "actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property."

[14] G.R. No. 152808, September 30, 2005, 471 SCRA 500.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.