

CONSOLACION Q. AUSTRIA, PETITIONER, VS. CONSUELO Q. JALANDONI, JOSE ALBERTO L. QUINTOS, RICARDO M. QUINTOS, JR., AILEEN M. QUINTOS AND TYRONE M. QUINTOS, RESPONDENTS.

G.R. NO. 170080. April 03, 2007

Ponente: TINGA, J.

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TINGA, J.:

Petitioner Consolacion Q. Austria assails the Decision[1] of the Court of Appeals in C.A. G.R. CV No. 68591 dated June 21, 2005 and its Resolution[2] dated October 7, 2005, which respectively affirmed the decision[3] of the Regional Trial Court of Makati City, Branch 142, dated February 14, 2000 and its order[4] dated August 7, 2000, and denied petitioner's motion for reconsideration.

The facts as narrated by the Court of Appeals are as follows:

Plaintiffs-appellees Constancia Lichauco, Consuelo Jalandoni, defendants Benedicto Quintos and Antonio Quintos, and defendant-appellant Consolacion Austria are siblings of full blood. Jose Alberto, Ricardo, Jr., Aileen and Tyrone, all surnamed Quintos, are the nephews and niece of the defendant-appellant.

The above-named persons are co-owners of two (2) parcels of land with an aggregate area of six hundred sixty one (661) square meters located in Palanan, Makati City. The aforesaid parcels of land have permanent improvements thereon which straddle both lots, namely, a residential bungalow and two (2) units, two-storey apartments, the titles of which are registered jointly in the names of the parties as co-owners thereof.

The plaintiffs-appellees allege that sometime in the early part of 1996, they informed defendant-appellant of their desire to have the subject properties partitioned based on the percentage of each co-owner's respective share.

A realtor was even engaged to prepare the schemes by which the subject properties could be physically partitioned among the co-owners. However, the defendant-appellant Austria refused to accede to any of the schemes presented by the realtor for the physical apportionment of the subject properties between the co-owners thereof.

Because of the refusal of the defendant-appellant Austria to partition the property, and the inability of the co-owners to mutually agree on an arrangement acceptable to all of them, on July 1, 1997, the plaintiffs-appellees filed a complaint with the Regional Trial Court of Makati City, Branch 142, which was docketed as Civil Case No. 97-1485, against the defendant-appellant Austria and two other defendants namely Benedicto Quintos and Antonio Quintos (as unwilling co-plaintiffs) for partition of the subject property.

Within the period for filing an answer, the defendant-appellant Austria filed an Omnibus Motion to Dismiss.

In its order dated November 10, 1997, the lower court denied the omnibus motion to dismiss of the defendant-appellant Austria, and directed the defendants to file their answer within the remaining period provided by the Rules.

Within the prescriptive period, the defendant-appellant Austria filed a Motion for Reconsideration of the November 10, 1997 order, which the lower court denied in an order dated February 2, 1998.

Not satisfied, the defendant-appellant Austria filed before the Court of Appeals a Petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court which was docketed as CA-GR SP No. 46907, seeking to annul the orders of November 10, 1997 and February 2, 1998.

In a Resolution dated July 9, 1998, the Court of Appeals required the plaintiffs-appellees to comment, and temporarily restrained the respondent judge, his agents, representatives, and other persons acting in his behalf from proceeding with Civil Case No. 97-1485 in order that the petition may not become moot and academic.

On November 9, 1998, the defendant-appellant Austria received a copy of the Decision dated October 30, 1998 dismissing her petition for certiorari and prohibition. The defendant-appellant Austria moved for the reconsideration thereof.

Subsequently, on July 19, 2001, defendant-appellant Austria received a copy of the Resolution of the Court of Appeals dated July 9, 2001, denying her motion for reconsideration of the decision denying her petition for certiorari and prohibition.

Undaunted, the defendant-appellant Austria then filed a petition for review under Rule 45 of the Revised Rules of Court with the Supreme Court.

In a resolution dated October 15, 2001, the Supreme Court denied the said petition for review for non-compliance with the 1997 Rules of Civil Procedure for failure to pay on time docket and other fees and deposit costs in violation of Sec. 3, Rule 45 in relation to Sec. 5(c), Rule 56.

Still not satisfied, on November 9, 2001, the defendant-appellant Austria filed a motion for reconsideration of the resolution dated October 15, 2001 denying her petition for review.

In its resolution dated January 24, 2002, the Supreme Court denied with finality the petitioner's motion for reconsideration.

During the pendency of the defendant-appellant's petition for certiorari and prohibition before the Court, the plaintiffs-appellees filed with the Regional Trial Court of Makati City, Branch 142 where the main case is pending, a motion dated April 6, 1998 praying that a declaration of default be issued against all defendants and for plaintiffs to be allowed to present evidence ex-parte.

In an order dated July 13, 1998, the Presiding Judge of the Regional Trial Court of Makati City held in abeyance the proceedings before it while awaiting the resolution of the motion for reconsideration pending before the Court of Appeals.

Notwithstanding the order holding in abeyance the proceedings in the lower court, plaintiffs-appellees filed a Manifestation and Motion dated September 14, 1998 praying for the resolution of their Motion dated April 6, 1998. In its order dated September 25, 1998, the lower court deemed the incident submitted for resolution.

While the motion for reconsideration filed by the appellant is still pending before the Court of Appeals, the lower court in its order dated July 6, 1999 declared the defendants in default, set the reception of ex-parte evidence, and commissioned the Branch Clerk of Court to receive the ex-parte evidence and to submit her corresponding report thereon as soon as the same is concluded.

On August 4, 1999, the defendant-appellant Austria filed a Motion for Reconsideration of the Order dated July 6, 1999 with an urgent prayer to cancel plaintiff's ex parte presentation of evidence on August 9, 1999, which was however denied by the lower court, for lack of merit, in an order dated January 14, 2000.

The plaintiffs-appellees then presented their evidence ex-parte on January 28, 2000.

The assailed decision was subsequently rendered by the lower court on February 14, 2000, finding in favor of the plaintiffs-appellees.

A motion for new trial was thereafter filed by the defendant-appellant Austria, which was, in an order dated August 7, 2000, denied for lack of merit.[5]

Petitioner elevated the case to the Court of Appeals which dismissed her petition and affirmed the trial court's decision but deleted the order that petitioner pay reasonable rental for her use of a portion of the disputed properties. The appellate court denied reconsideration.

In assailing the Decision of the Court of Appeals, petitioner avers that her motion for new trial and appeal of the judgment by default are valid remedies under the Rules of Court. She insists that the appellate court erred in not reversing the declaration of default despite the fact that she questioned the default order in the petition for review which she seasonably filed with the Court of Appeals. Petitioner also contends that it was error for the trial court to allow the sale of the entire property in dispute.

Respondents filed a Comment[6] dated March 30, 2006, arguing that petitioner was correctly declared in default because of her obstinate refusal to file an answer to the complaint despite being ordered to do so by the trial court. They also allege that they cannot be compelled to remain in co-ownership only because of petitioner's unjustified refusal to consent to a partition.

A Reply to Comment[7] dated July 25, 2006 was filed by petitioner who insisted that she was denied the right to fully ventilate her case.

Only two issues are raised in this petition. The first issue pertains to petitioner's insistence that the judgment by default rendered by the trial court, which was subsequently affirmed by the Court of Appeals, is a denial of her day in court. The second issue concerns the validity of the trial court's decision alternatively ordering the partition of the subject property or authorizing its sale.

A defendant declared in default has the following remedies: (a) a motion to set aside the order of default under Sec. 3(b), Rule 9 of the Rules of Court; (b) a motion for new trial under Sec. 1(a), Rule 37 if the default was discovered after judgment but while appeal is still available; (c) a petition for relief under Rule 38 if judgment has become final and executory; and (d) an appeal from the judgment under Sec. 1, Rule 41 even if no petition to set aside the order of default has been resorted to.[8]

In this case, petitioner did not move to set aside the order of default rendered by the trial court but filed a motion for new trial after a decision had already been rendered in the case. The motion for new trial, however, was denied by the trial court for lack of merit. She then appealed to the Court of Appeals, assailing both the denial of her motion for new trial and the adverse decision of the trial court.

Evidently, petitioner utilized the appropriate remedies available to her. The fact, however, that she availed of the proper remedies does not by itself result in a judgment in her favor or the reversal of the assailed order and decision of the trial court. As correctly ruled by the Court of Appeals, petitioner was declared in default because of her adamant refusal to file an answer despite being required to do so.

The factual circumstances in the cases of *Heirs of Akut v. Court of Appeals*[9] and *Ampeloquio v. Court of Appeals*,[10] cited by petitioner in pleading liberality, are markedly different from this case. In *Heirs of Akut*, petitioners were not able to file an answer within the reglementary period because they failed to obtain the services of counsel on time and two of the petitioners were then sick. In *Ampeloquio*, the trial court's order denying defendant's motion to dismiss was mistakenly served upon one of its counsels on record and not upon the lawyer in charge of the case. Consequently, the answer was not filed on time. In both cases, there was no

indication that the failure to answer was intended to delay the case.

In contrast, the facts of this case suggest an intention on the part of petitioner to delay the proceedings. The complaint was first filed in 1997 but is only now being finally laid to rest because of several procedural stumbling blocks, including the elevation of the case to this Court on the issue of the propriety of the trial court's denial of petitioner's motion to dismiss, hurled by petitioner one after the other.

Parenthetically, the appellate court initially issued a temporary restraining order as an incident to the petition for certiorari filed by petitioner questioning the trial court's order denying her motion to dismiss but the restraining order was lifted after its 60-day validity.[11] The expiration of the temporary restraining order resulted in the running of the prescribed period to file an answer and the continuation of the proceedings before the trial court. Petitioner's obstinate refusal to file an answer to the complaint despite these circumstances clearly justifies the declaration of default by the trial court and its affirmation by the Court of Appeals.

This case has crept, ever so slowly, up the ladder of judicial process. While we are not dissuading parties from availing of the judicial remedies outlined in the Rules of Court, they should be cautioned to be judicious in availing of these remedies. After all, rules of procedure are intended to be, not tools of delay, but of prompt and just disposition of every party's cause. Having fully availed of, even exploited, these remedies, petitioner cannot feign denial of her day in court. She has been given every opportunity to fully ventilate her side.

Now, we turn to the second issue raised by petitioner, i.e., the validity of the trial court's decision alternatively directing the partition of the subject properties or authorizing their sale to a third party.

There are two stages in every action for partition. The first phase is the determination of whether a co-ownership in fact exists and a partition is proper, i.e., not otherwise legally proscribed, and may be made by voluntary agreement of all the parties interested in the property. This phase may end either: (a) with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited; or (b) with a determination that a co-ownership does in truth exist, partition is proper in the premises, and an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon.[12]

The second phase commences when it appears that the parties are unable to agree upon the partition directed by the court. In that event, partition shall be done for the parties by the court with the assistance of not more than three (3) commissioners. This second stage may well also deal with the rendition of the accounting itself and its approval by the court after the parties have been accorded opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just share in the rents and profits of the real estate in question.[13]

The proceedings in this case have only reached the first phase. It must be mentioned as an aside that even if the order decreeing partition leaves something more to be done by the trial court for the complete disposition of the case, i.e., the appointment of commissioners, the proceedings for the determination of just compensation by the appointed commissioners, the submission of their reports and hearing thereon, and the approval of the partition, it is considered a final order and may be appealed by the party aggrieved thereby.[14]

There is no question that a co-ownership exists between petitioner and respondents. To this extent, the trial court was correct in decreeing partition in line with the Civil Code provision that no co-owner shall be obliged to remain in the co-ownership.[15]

However, the trial court went astray when it also authorized the sale of the subject properties to a third party and

the division of the proceeds thereof. What makes this portion of the decision all the more objectionable is the fact that the trial court conditioned the sale upon the price and terms acceptable to plaintiffs (respondents herein) only, and adjudicated the proceeds of the sale again only to plaintiffs. The pertinent portion of the trial court's disposition states:

WHEREFORE, on the basis of the foregoing considerations, judgment is hereby rendered in favor of plaintiff:

- 1) Directing the partition (physical division) of the subject properties and all improvements thereon among the co-owners in accordance with their respective shares; or
- 2) Authorizing the sale, conveyance or transfer of the above-described properties to a third-party at such price and under such terms acceptable to plaintiffs and thereafter, dividing the proceeds of said sale among them in accordance with their proportionate interests.[16] [Emphasis supplied.]

It is true that petitioner did not assign this error on appeal resulting in the appellate court's failure to rule on the matter. Nonetheless, we cannot simply brush this issue aside considering that its resolution is necessary in arriving at a just disposition of the case.[17] The rectification of the trial court's decision is accordingly in order.

WHEREFORE, the petition is GRANTED IN PART. The Decision of the Court of Appeals dated June 21, 2005 is REVERSED in so far as it affirms the portion of the decision dated February 14, 2000 of the Regional Trial Court of Makati City, Branch 142, which authorizes the sale, conveyance or transfer of the properties subject of this case and the division of the proceeds of said sale to respondents herein. The Decision dated June 21, 2005 and Resolution dated October 7, 2005 are AFFIRMED in all other respects. No pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, pp. 31-61.

[2] Id. at 63-64.

[3] Records, Vol. 2I, pp. 448-455.

[4] Id. at 492-494.

[5] Rollo, pp. 33-38.

[6] Id. at 121-128.

[7] Id. at 144-147.

[8] *Indiana Aerospace University v. Commission on Higher Education*, G.R. No. 139371, April 4, 2001, 356 SCRA 367; *Tan v. Dumarpa*, G.R. No. 138777, September 22, 2004, 438 SCRA 659.

[9] No. L-45472, August 30, 1982, 116 SCRA 213.

[10] G.R. No. 124243, June 15, 2000, 333 SCRA 465.

[11] RULES OF COURT, Rule 58, Sec. 5.

[12] *Magculot-Aw v. Magculot*, G.R. No. 132518, 385 Phil. 720 (2000); *Daffon v. Court of Appeals*, G.R. No. 129017, August 20, 2002, 387 SCRA 427.

[13] Magculot-Aw v. Magculot, *supra*.

[14] 2 FERIA AND NOCHE, CIVIL PROCEDURE ANNOTATED 597 (2001 ed.).

[15] Civil Code, Art. 494.

[16] Records, Vol. 2I, p. 454.

[17] *Dumo v. Espinas*, G.R. No. 141962, January 25, 2006.

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