

AMPARO ROBLES CABREZA, PETITIONER, VS. CEFERINO S. CABREZA, JR., JUDGE PABLITO ROXAS, SHERIFF RONBERTO VALINO, REGIONAL TRIAL COURT BRANCH 70 PASIG CITY, RESPONDENTS.

G.R. No. 171260. September 11, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, seeking to set aside the December 7, 2005 Decision[2] and February 7, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86770.

The facts of the case are as follows:

Ceferino S. Cabreza, Jr. (respondent) filed with the Regional Trial Court (RTC), Branch 70, of Pasig City, a petition for the declaration of nullity of his marriage to Amparo Robles Cabreza (petitioner). The same was docketed as JDRC Case No. 3705.

On January 3, 2001, the RTC rendered a Decision[4] granting the petition, the dispositive portion of which reads:

WHEREFORE, the Court hereby grants the instant petition and declares the marriage of petitioner and respondent a nullity pursuant to Art. 36 of the Family Code.

Further, the conjugal partnership is hereby dissolved and must be liquidated in accordance with Art. 129 of the Family Code, without prejudice to the prior rights of known and unknown creditors of the conjugal partnership.

Let copies of this decision be furnished the Local Civil Registrars of Cainta, Rizal and Pasig City and the Registry of Deeds of Pasig City, for record purposes.

SO ORDERED.[5]

Said Decision is final and executory.

On March 7, 2003, respondent filed with the RTC a Motion for Execution (Re: Dissolution of Conjugal Partnership). In said motion, respondent sought to implement the order for the liquidation of the conjugal partnership, which consisted solely in the real property located at No. 20 United Street, Bo. Capitolyo, Pasig City, covered by Transfer Certificate of Title No. 17460. For this purpose, he moved that said property be sold and the proceeds be divided and distributed.[6]

On May 26, 2003, the RTC issued an Order[7] granting respondent's motion, the dispositive portion of which reads:

WHEREFORE, the Court hereby orders that the property covered by Transfer Certificate of Title No. 17460 be

sold and the proceeds thereof be divided and distributed, as follows:

- a) 1/2 or 50% of the total proceeds shall be delivered to the common children of the petitioner and the respondent as their presumptive legitime;
- b) the other half or 50% of the proceeds shall be equally divided between the petitioner and the respondent. From the share of the respondent should be deducted the total amount of PHP 1,500,000.00 which was earlier advanced by petitioner to respondent, but which was adjudged to be returned to the former by the latter pursuant to the Resolution of the Court of Appeals dated November 14, 1994 (Exh. "F") and reiterated in the final and executory Decision in this case by this Court.

All of the foregoing are subject to the claim of creditors of the conjugal partnership or of the petitioner and respondent, if any.

SO ORDERED.[8]

On July 30, 2003, the RTC issued an order granting respondent's motion to allow prospective buyers to inspect the property.[9]

On October 2, 2003, the RTC issued another order granting respondent's motion which prayed for the approval of the deed of absolute sale, for the authorization for respondent to sign said deed in behalf of petitioner, and for an order requiring the occupants to vacate the property.[10]

Petitioner filed a motion for reconsideration questioning the October 2, 2003 Order which was however denied by the said court in an Order dated November 4, 2003.[11]

On May 12, 2004, the RTC issued another order granting respondent's prayer for the issuance of a writ of possession, thus:

The Decision in this case having attained finality, petitioner's motion (for issuance of Writ of Possession) is impressed with merit and is hereby GRANTED.

However, before the Court issues the said Writ of Possession, the buyer, BJD Holdings Corporation, is first directed to comply with its undertaking to submit to the Court a Certificate of Bank Deposit in the amount of Ten Million Pesos (PHP 10,000,000.00), representing the total purchase price for the property as contained in the Deed of Absolute Sale which was approved by this Court in its Order dated October 2, 2003.

SO ORDERED.[12]

On June 25, 2004, the RTC issued an Order[13] granting a writ of possession in favor of the buyer of the property, BJD Holdings Corporation. Thereafter, on June 30, 2004, a writ of possession[14] was issued. On July 5, 2004, a Notice to Vacate[15] was served on petitioner.

On July 8, 2004, petitioner filed a Motion to Hold in Abeyance the Writ of Possession and Notice to Vacate,[16] arguing that Article 129(9) of the New Civil Code provides that, in the partition of the properties, the conjugal dwelling and lot on which it is situated shall be adjudicated to the spouse with whom majority of the children choose to remain. Hence, since the majority of the children, albeit of legal age, opted to stay with petitioner, she asserted that the family home should be given to her.

On August 4, 2004, the RTC issued an Order[17] denying the motion of petitioner, the pertinent portions of which read:

The Decision in this case having long become final and executory - the appeals before the Court of Appeals, as well as with the Supreme Court were dismissed with finality - there is nothing more to be done other than to

have the Decision implemented.

x x x x

It is evident from Article 129 of the Family Code that the same presupposes a situation where there are other properties aside from the property subject of the motion that constitute the conjugal partnership. In the instant case, there is only one (1) piece of property involved which is the real property covered by TCT No. 17460 located at No. 20 United St., Bo. Capitolyo, Pasig City. Pursuant to the order of this Court dated 26 May 2003, granting the Motion for Execution of the Decision, said property was ordered to be sold and the proceeds distributed, x x x.

x x x x

It will be noted from the foregoing sequence of events that there is nothing more that remains to be done, but to enforce the final and executory Decision, as well as its implementing orders.

WHEREFORE, the Motion to Hold in Abeyance Writ of Possession and Motion to Vacate is hereby DENIED, for lack of merit.

SO ORDERED.[18]

On August 6, 2004, petitioner filed a Motion for Reconsideration which was however denied by the RTC in an order dated August 27, 2004.

On September 2, 2004, the Sheriff issued a Final Notice to Vacate[19].

On October 4, 2004, petitioner filed with the CA a Petition for Certiorari[20] assailing the order of possession, writ of possession and notice to vacate.

On December 7, 2005, the CA rendered a Decision[21] denying the petition for certiorari. The CA ruled in the wise:

We do not agree, to begin with, that the assailed issuances were tainted by lack of jurisdiction or grave abuse of discretion. Instead, we consider the contention of the respondent husband, that Art. 129 (9), Family Code, supra, is applicable only when the spouses had other assets to be divided between them, to be correct. Indeed Art. 129(9), Family Code, supra, obviously refers to "partition of the properties". Hence, the respondent Judge was not guilty of any arbitrariness, whimsicality or capriciousness in issuing the assailed orders and writ. It is not disputed that the conjugal dwelling in question (Transfer Certificate of Title No. 17460) was the only asset of the conjugal partnership that was the subject of partition between the spouses.

The more decisive fact is, however, the finality of the RTC judgment dated May 26, 2003.

The petitioner wife wants to change the final judgment, insisting that the conjugal dwelling should be awarded exclusively to her because the common children of the spouses, albeit of legal age, have chosen to live with her. We cannot permit what petitioner wants because it does not (sic) accord with the decree of the final judgment dated May 26, 2003, which specifically and plainly directed that the property was to be sold and the proceeds of the sale was divided and distributed, x x x x[22]

Petitioner then filed a Motion for Reconsideration which was however denied by the CA in a Resolution[23] dated February 7, 2006.

Hence, herein petition, with petitioner raising the following issues, to wit:

ARE THE ORDER OF POSSESSION, WRIT OF EXECUTION/POSSESSION AND NOTICE TO VACATE THAT VARY THE TERMS OF THE DISPOSITIVE PORTION OF THE DECISION IN ACCORDANCE WITH SUPREME COURT DECISIONS?

IS THE COURT OF APPEALS DECISION IN ACCORDANCE WITH SUPREME COURT DECISION?[24]

The petition is bereft of merit.

Petitioner argues in the main that the order of possession, writ of possession and notice to vacate vary the terms of the dispositive portion of the January 3, 2001 RTC Decision, because the same authorize the sale of the family home. Specifically, petitioner anchors her petition on Article 129 (9) of the Civil Code, which reads:

In the partition of the properties, the conjugal dwelling and lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain.

Petitioner also argues against the contention of respondent that article 129(9) does not apply because of the lack of other properties. She points out that there is another property, the same covered by TCT No. 17461, which she alleges was presented and forms part of the record.[25]

Respondent, for his part, contends that the petition must be dismissed because the same raises a question of fact, and it raises an issue that has already been resolved with finality.

For clarity, the pertinent portion of the final and executory January 3, 2001 RTC decision reads:

Further, the conjugal partnership is hereby dissolved and must be liquidated in accordance with Art. 129 of the Family Code, without prejudice to the prior rights of known and unknown creditors of the conjugal partnership.[26]

In addition, the pertinent portion of the May 26, 2003 RTC Order granting respondent's motion for execution reads:

WHEREFORE, the Court hereby orders that the property covered by Transfer Certificate of Title No. 17460 be sold[27] and the proceeds thereof be divided and distributed, as follows: x x x[28]

Before anything else, this Court shall address the procedural issue raised by respondent. He argues that the May 26, 2003 Order is already final and executory; hence, he contends that petitioner can no longer question the order that the property covered by Transfer Certificate of Title No. 17460 be sold.[29]

It is this Court's finding that petitioner is not candid, as she omits certain facts that are pertinent to the petition at bar. Quite noticeably, her narration of facts begins from the January 3, 2001 Decision of the RTC and then suddenly jumps to its June 25, 2004 Order of Possession. She would impress upon this Court that nothing significant happened between January 3, 2001 and June 25, 2004, when on the contrary, the events that transpired during the said interval are material and important for a just resolution of the case at bar.

After a perusal of the records, this Court takes note of the following events that occurred between January 3, 2001 and June 25, 2004:

On June 12, 2003, petitioner filed with the CA a Petition for Review[30] assailing the May 26, 2003 Order of the RTC, which ordered the sale of the family home. The same was docketed as CA-G.R. SP No. 77506.

On July 31, 2003, the CA issued a Resolution[31] dismissing the petition for review, the dispositive portion of which reads:

ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.[32]

On March 30, 2004, petitioner filed a Petition for Certiorari[33] before this Court assailing the CA Resolution. The same was docketed as G.R. No. 162745.

On May 24, 2004, this Court issued a Resolution^[34] denying the petition. Accordingly, on July 23, 2004, an Entry of Judgment^[35] was issued rendering the May 24, 2004 Resolution final and executory.

In addition, this Court also takes note that there is another case filed by petitioner with the CA, docketed as CA-GR. CV No. 8651,^[36] questioning the validity of the Deed of Sale between respondent and BJD Holdings Corporation. The CA granted said petition and ordered that the case be remanded to the RTC for further proceedings.

In summary, the three cases including herein petition, are the following:

G.R. No. 162745, Amparo R. Cabreza v. Court of Appeals, et al., questioning the May 26, 2003 RTC Order granting respondent's motion to sell the family home. Said petition was denied by this Court and an Entry of Judgment was issued on July 23, 2004.

G.R. No. 171260, Amparo R. Cabreza v. Ceferino Cabreza et al., herein petition, questioning the writ of execution/possession and notice to vacate because they allegedly varied the terms of the dispositive portion of the January 3, 2001 judgment of the RTC.

CA-GR. CV No. 86511, Amparo R. Cabreza v. Ceferino S. Cabreza, et al., questioning the Deed of Sale between respondent and BJD Holdings Corporation, allegedly because of petitioners lack of consent thereto. The petition was granted by the CA, which ordered for the remand of the case to the RTC for further proceedings.

Based on the foregoing, herein petition must fail.

Petitioner cannot hide from the fact that the May 26, 2003 Order of the RTC is already final and executory as a necessary consequence of the Entry of Judgment dated July 23, 2004. Said Order categorically authorized the sale of the family home. Although the CA may have mistakenly denominated the May 26, 2003 Order as a "judgment", the same does not detract from the fact that the said order should be considered final and executory, as petitioners' attempt to question the same has already been denied by this Court.

Inescapably, this Court must consider, in the event herein petition is granted, will the same change or vary the final May 26, 2003 RTC Order which ordered that the family home be sold and the proceeds be divided? This Court finds that it does.

In her Memorandum,^[37] petitioner maintains that it is not true that "the issues regarding the sale of the subject property has long been settled by the Court of Appeals and the Supreme Court,"^[38] and thus she argues in this wise:

The Order to Sell the subject property is questioned before this Honorable Court on the ground that the same varies the dispositive portion of the final decision of the court a quo. The dispositive portion of the final decision does not decree sale but the lower court a quo ordered sale of the family home.

Likewise, it is judicially admitted by the private respondent that a Complaint to Annul the Deed of Sale is pending appeal in the Court of Appeals (Comment, par. 2.7, p. 5) based of lack of consent to and signature of herein petitioner in the Deed of Sale. This Complaint for Annulment of Sale is different from the instant case that seeks to annul the Order to Sell and to vacate which varies the dispositive portion of the final decision.

Premises considered, it is not true that the challenged Order to Sell has become final and executory.

Assuming, arguendo, that the Order to Sell is valid, the Deed of Sale is void due to lack of consent to and signature of the herein petitioner thereon. Assuming further, without admitting, the sale was valid, the Order to vacate is not valid for lack of delivery of price.^[39]

It is very apparent that petitioner tries to hide from the fact that the January 3, 2001 Decision was implemented by the RTC in its May 26, 2003 Order. She also tries to hide from the fact that this Court has denied her earlier petition, which questioned the May 26, 2003 Order.

In CA G.R. CV No. 77506, petitioner already questioned the sale of the family home, as can be gleaned from her allegations, as follows:

"1.4 The Court erred in ordering that the property covered by Transfer Certificate of Title No. 17460 be sold, in violation of Provision of Article 102 (6) of the Family Code of the Philippines, which stipulates that:

"Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot shall be adjudicated to the spouse with whom the majority of the common children choose to remain"[40].

In addition, petitioner alleges: "FURTHERMORE, HER FAMILY DOMICILE IS ORDERED BY THE COURT TO BE SOLD.[41]" Lastly, petitioner prays that x x x the Order dated May 26, 2003 in the instant case be set aside and reversed x x x".[42]

Thus, the issue in herein petition of whether or not the sale of the property varies the January 3, 2001 Decision should no longer be litigated anew. To allow so, would permit petitioner to indirectly reopen its failed petition in G.R. No. 162745 (CA G.R. CV No. 77506).

The May 26, 2003 Order was the first order that "varied" the January 3, 2001 Decision, as it categorically decreed the sale of the property. The order of possession, writ of possession and notice to vacate, which are now assailed by petitioner, were all implemented after the May 26, 2003 Order. Hence, petitioner should have already raised herein argument in its first petition in CA-G.R. SP No. 77506, as the facts on which she anchors her argument were already operative then. She did not raise the same in CA-G.R. SP No. 77506, and it would be unfair to allow her to raise said argument in this petition in the guise of questioning the subsequent implementing orders of the RTC.

There is also no compelling reason for this Court to exercise its equity jurisdiction in the case at bar. It is of notice that in her failed petition in CA-G.R. SP No. 77506, petitioner filed the same on her behalf and without the services of a lawyer. Thus, the same was dismissed by the CA on procedural grounds; among the reasons given was that petitioner had availed herself of the wrong remedy, and that she had failed to attach the necessary documents.

Petitioner then sought redress in this Court through a petition which was docketed as G.R. No. 162745. As in her petition before the CA, petitioner again did not avail herself of the services of a lawyer. Thus, the petition before this Court suffered the same fate, as it dismissed the same via a resolution again on technicalities.

While there is no prohibition for private parties to file a petition on their own behalf, it necessarily follows that they take the risk of not having a lawyer who is well-versed in appellate practice. After her failed petition in the CA, petitioner already had the opportunity to rectify the situation by engaging the services of a lawyer when she filed her petition before this Court; yet for some reason, she chose not to do so. Thus, she has no one else to blame but herself.

Based on the foregoing, this Court finds no compelling reason to entertain petitioner's argument, which should have been timely raised in her petition before the CA in CA -G.R. SP No. 77506.

Moreover, in her effort to salvage her petition, petitioner contends that the deed of sale between respondent and the BJD Holdings Corporation is not valid because of her lack of consent thereto. Such argument, however, deserves scant consideration, as petitioner herself manifested that there is a pending case involving the validity of

the deed of sale pursuant to the CA's ruling in CA-G.R CV No. 86511. The same therefore cannot be the proper subject of herein petition.

Anent petitioner's allegation that there is another conjugal property other than that covered by TCT No. 17460, the same is a question of fact which should not be the proper subject of a petition under Rule 45 of the Rules of Court.

J.R. Blanco v. Quasha[43] is instructive, to wit:

To begin with, this Court is not a trier of facts. It is not its function to examine and determine the weight of the evidence supporting the assailed decision. In *Philippine Airlines, Inc. vs. Court of Appeals* (275 SCRA 621 [1997]), the Court held that factual findings of the Court of Appeals which are supported by substantial evidence are binding, final and conclusive upon the Supreme Court. So also, well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court." Moreover, well entrenched is the prevailing jurisprudence that only errors of law and not of facts are reviewable by this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court, which applies with greater force to the Petition under consideration because the factual findings by the Court of Appeals are in full agreement with what the trial court found.[44]

In the case at bar, the RTC in its August 4, 2004 Order found:

x x x In the instant case, there is only one (1) piece of property involved which is the real property covered by TCT No. 17460 located at No. 20 United St., Bo. Capitolyo, Pasig City. x x x[45]

Likewise, the CA in its December 7, 2005 Decision found:

x x x It is not disputed that the conjugal dwelling in question (Transfer Certificate of Title No. 17460) was the only asset of the conjugal partnership that was the subject of partition between the spouses.[46]

Based on the foregoing, this Court finds no reason to reverse the findings of fact made by the CA, more so, since the same is in accordance with the findings of fact of the RTC.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The December 7, 2005 Decision and February 7, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 86770 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Rollo, pp. 3-21.

[2] Penned by Associate Justice Lucas P. Bersamin, with Associate Justices Renato C. Dacudao and Celia C. Librea-Leagogo, concurring; id. at 102-108.

[3] Id. at 115-116.

[4] Rollo, pp. 22-28.

[5] Id. at 28. (Emphasis Supplied.)

[6] CA rollo, p. 21.

[7] Id. at 21-22.

[8] Id at 22.

[9] As stated in the whereas clause of the Writ of Possession issued by the RTC dated June 30, 2004, rollo, pp.37-41, 38.

[10] Rollo, p. 39.

[11] Id.

[12] As stated in respondent's memorandum, pp. 241-258, 243.

[13] Rollo, p. 30.

[14] Id. at 37-41

[15] Id. at 43.

[16] Id. at 44-46.

[17] Id. at 58-59.

[18] Id.

[19] Id. at 73.

[20] Id. at 74-85.

[21] Id. at 102-108.

[22] Id at 106. (Emphasis supplied.)

[23] Rollo, pp. 115-116.

[24] Id at 14.

[25] Rollo, p. 16.

[26] Id. at 28. (Emphasis supplied.)

[27] Emphasis supplied.

[28] Rollo, p. 22.

[29] Rollo, p. 254.

[30] CA rollo, pp. 109- 116.

[31] Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin (now a member of this Court), concurring; id. at 117-118. Said petition was denied on the following grounds:

- It is a wrong mode of remedy. Since the assailed order is an order of execution for the sale of a conjugal property, the proper remedy is a petition for certiorari.
- Even if we treat the petition as one for certiorari, it is still dismissible for lack of showing of a motion for reconsideration filed in the lower court.
- The Decision of the Regional Trial Court in JDRC Case No. 3705, dated 03 January 2001, had long become final and executory, per Order dated May 26, 2003.

- No copy of the said relevant Decision nor of the motion for execution is attached to the petition.

[32] Id at 118.

[33] Id. at 119-122.

[34] Id at 123. Said petition was denied for the following reasons:

(a) failure to state the material dates showing when the assailed decision of the Court of Appeals was promulgated, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received in violation of Secs. 4(b) and 5, Rule 45 in relation to Sect. 5(d) Rule 56; and

(b) failure to accompany the petition with a clearly legible duplicate original, or certified true copy of the judgment/final order/resolution certified by the Clerk of Court of the court a quo, in violation of Secs. 4(d) and 5, Rule 45 in relation to Sec. 5(d), Rule 56.

[35] Rollo, p. 124.

[36] Id. at 270-280.

[37] Rollo, pp. 207-235.

[38] Id. at 225.

[39] Id. at 225-226.

[40] CA rollo at 113.

[41] Id. at 114.

[42] Id.

[43] 376 Phil. 480 (1990).

[44] Id. at 491, citing Bagawili v. People, 304 SCRA 252 (1999). (Emphasis supplied.)

[45] Rollo, p. 59.

[46] Id. at 106.

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