

**ANDREW B. NUDO, PETITIONER, VS. HON. AMADO S. CAGUIOA,
SPOUSES PETRONILO AND MARCELA NUDO, ATTY. REMEDIOS B.
REYES, RUBEN ATIJERA AND ROMEO FLORENDO, RESPONDENTS.**

G.R. No. 176906. August 04, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this petition are the Court of Appeals Resolutions^[1] dated June 8, 2006 and February 5, 2007 in CA-G.R. SP No. 94170, which dismissed outright the petition for annulment of judgment filed by herein petitioner.

The antecedents of the case are as follows:

On August 21, 1996, private respondents, spouses Petronilo and Marcela Nudo, filed a complaint for partition and damages against the spouses, Gumersindo and Zosima Nudo. Petronilo and Gumersindo are brothers and pro-indiviso co-owners of a parcel of land, with an area of 425 square meters, located at Regidor Street, Pacdal, Baguio City and covered by Transfer Certificate of Title (TCT) No. T-13496 of the Registry of Deeds of Baguio City.^[2] Since 1990, Petronilo had requested Gumersindo to accede to the partition of the property, but the latter refused, thus forcing him to initiate the complaint. The case was docketed as Civil Case No. 3493.

During the pendency of the case, more specifically, on March 13, 2000, Gumersindo Nudo died.^[3] No substitution was effected by the court.

On July 24, 2001, the RTC rendered judgment in favor of private respondents, thus:

WHEREFORE, from the foregoing, judgment is hereby rendered ordering the defendants spouses Gumersindo F. Nudo and Zosima B. Nudo to partition the property in question among themselves in accordance with Section 2, Rule 69 of the 1997 Rules of Civil Procedure and to submit to this Court their partition agreement within sixty (60) days after their partition.

SO ORDERED.^[4]

Defendants' counsel brought the case to the CA on appeal. On November 21, 2002, the CA issued a resolution dismissing the appeal for failure to file appellants' brief.^[5] It then issued an entry of judgment on November 21, 2002.

Thereafter, on June 22, 2003, Zosima Nudo died.^[6]

On March 10, 2004, private respondents filed a motion for execution, which was granted by the court on July 14, 2004. Accordingly, a writ of execution was issued by the Clerk of Court on July 22, 2004.^[7] On September 12, 2005, Sheriff Ruben L. Atijera returned the writ unenforced on the ground that Susana Nudo, daughter of Gumersindo and Zosima Nudo, promised to settle with private respondents and offer the purchase of their share in the subject property.^[8]

On August 12, 2005, private respondents filed an Ex-Parte Motion for the Issuance of an Alias Writ of Execution, which the court granted.[9] An Alias Writ of Execution was issued, but the same was again returned unenforced on December 27, 2005. The Sheriff's Return stated that the defendants' house, which was being occupied by defendants' heirs, still encroached approximately 82 sq m of the portion allotted to the private respondents, and that Susana Nudo refused to accept private respondents' proposed partition.[10]

On April 21, 2006, petitioner, Andrew B. Nudo, son of Gumersindo and Zosima Nudo, filed a Petition for Annulment of Judgment, seeking to annul the RTC Decision in the partition case. Petitioner alleged therein that neither he nor the other heirs were substituted in place of their parents in the proceedings for partition before the trial court. This allegedly rendered the proceedings null and void.[11] Petitioner further alleged that he only found out about the case sometime in March 2006 when respondents, Sheriffs Romeo R. Florendo and Ruben L. Atijera, went to the office of Susana Nudo and showed her a blueprint of a subdivision plan.[12]

On June 8, 2006, the CA issued a Resolution dismissing outright the petition for annulment of judgment.[13] According to the CA, annulment of judgment could not be availed of since petitioner's predecessors-in-interest had availed themselves of the remedy of appeal. Petitioner's recourse should have been against the CA Resolution dated November 21, 2002, which dismissed the appeal.

On February 5, 2007, the CA denied petitioner's motion for reconsideration for lack of merit.[14]

Petitioner filed this petition, raising the issue of whether the judgment in Civil Case No. 3493-R could be annulled on the ground that he was not substituted for his deceased parents in the said case.

The petition has no merit.

An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the Court. It is a recourse equitable in character allowed only in exceptional cases. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.[15] Under Section 2, Rule 47 of the Rules of Civil Procedure, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[16]

Non-substitution of the heirs of a deceased party is not jurisdictional. The rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate.[17] It is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.[18]

We note that both parents of the petitioner were defendants in the case for partition. Hence, even after Gumersindo died, Zosima remained a party. And both defendants continued to be represented by counsel as, in fact, a notice of appeal was filed by their counsel before the CA.

In this petition, petitioner gives the impression that his mother, Zosima Nudo, died while the appeal was still pending before the CA. The records, however, show that Zosima died on June 22, 2003, after the CA's resolution dismissing the appeal became final and executory. Therefore, at no time were the petitioner's parents deprived of any representative in the partition case, until the judgment therein became final and executory.

Petitioner cannot therefore claim now that the judgment in the partition case is null and void for failure of the court to implead him, as the judgment became final and executory prior to the death of his mother. The judgment

in the partition case is now enforceable against Gumersindo and Zosima's successor-in-interest, including herein petitioner, following Sec. 7(b), Rule 39 of the Rules of Civil Procedure, which provides:

Sec. 7. Execution in case of death of party. -- In case of death of a party, execution may issue or be enforced in the following manner:

x x x x

(b) In case of death of the judgment obligor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;

x x x x

As a final note, we find difficult to believe petitioner's feigned ignorance of the case and his claim that he only found out about it in March 2006. The parties to this case are closely related, the petitioner being the nephew of private respondents. Certainly, the partition case, which could result in the petitioner being deprived of a portion of the property that he and the other heirs would inherit from their parents, would have been an important subject among the parties concerned. Moreover, the Sheriff's Return dated September 12, 2005 stated that Susana Nudo, petitioner's sister, refused the enforcement of the writ on the ground that she was negotiating with private respondents for the purchase of their share in the subject property; she was therefore already well aware of the judgment at that time. To allow the petitioner to avail himself of the annulment of judgment would amount to putting a premium on the inaction or negligence of the heirs in pursuing the case that had been brought against their parents.

WHEREFORE, premises considered, the petition is DENIED DUE COURSE. The Resolutions of the Court of Appeals dated June 8, 2006 and February 5, 2007, respectively, are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Lucas P. Bersamin (now Associate Justice of this Court) and Ramon M. Bato, concurring; rollo, pp. 79-80.

[2] Rollo, p. 30-31.

[3] Id. at 45.

[4] Id. at 49.

[5] Id. at 51.

[6] Id. at 59.

[7] Id. at 52-53.

[8] Id. at 54.

[9] Id. at 56.

[10] Id. at 57.

[11] Id. at 61-62.

[12] Id. at 72.

[13] Id. at 79-80.

[14] Id. at 91.

[15] Veneracion v. Mancilla, G.R. No. 158238, July 20, 2006, 495 SCRA 712, 724.

[16] Tolentino v. Leviste, G.R. No. 156118, November 19, 2004, 443 SCRA 274, 284.

[17] Napere v. Barbarona, G.R. No. 160426, January 31, 2008, 543 SCRA 376, 382.

[18] Id.

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