

GEORGE S. TOLENTINO, MONICA S. TOLENTINO, GUSTAVO S. TOLENTINO, JR., MA. MARJORIE S. TOLENTINO, MARILYN S. TOLENTINO, MICHAEL GLEN S. TOLENTINO, MYLENE S. TOLENTINO, MILAGROS M....

G.R. No. 181368. February 22, 2012

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated October 18, 2007 and January 22, 2008, respectively, in CA-G.R. CV No. 78676.

The factual milieu follows.

Respondents, in their complaint before the Regional Trial Court, alleged that they are the registered owners of a parcel of land situated in Barangay Balugo, Tagkawayan, Quezon, with an area of 1,056,275 square meters, covered by Transfer Certificate of Title (TCT) No. T-43927. For several years, petitioners have been in actual possession of the western portion of the said property with a total area of 620,000 square meters which they tried to develop into fishponds. In the years 1993 and 1994, respondents informed petitioners, through Gustavo C. Tolentino, Sr. (Gustavo) who was then representing them, that the area they are occupying was inside the respondents' property and, therefore, they should vacate and leave the same. Gustavo, however, asked for time to verify respondents' claim. If found to be true, then the petitioners were willing to discuss with respondents the improvements that they have introduced on the subject area. Respondents have waited for almost a year for the outcome of the intended verification, but they waited in vain until Gustavo died. Petitioners continued to develop the area they were occupying into fishponds, thereby manifesting their unwillingness to vacate the premises and restore the possession thereof in favor of respondents. Hence, respondents filed a suit against petitioners to recover the property and demand payment of unearned income, attorney's fees and costs of suit.

Petitioners, as defendants in the trial court, averred in their Answer that the subject property is owned by the Republic and they are occupying the same by virtue of a Fishpond Lease Agreement entered with the Department of Agriculture. Thus, their stay over the property is lawful.

On August 27, 1996, petitioners were declared in default, for failure to appear at the pre-trial conference. However, the trial court set aside the default order and reset the pre-trial conference. Despite several resetting of the pre-trial conference of which petitioners were notified, petitioners failed to appear. Hence, on March 21, 2000, the trial court issued an Order allowing respondents to present their evidence *ex parte*, instead of declaring petitioners in default.[3]

After the *ex parte* hearing for the reception of evidence, the RTC ruled in favor of respondents, thus:

WHEREFORE, judgment is hereby rendered to wit:

(a) Ordering the defendants [petitioners herein] George S. Tolentino, Monica S. Tolentino, Gustavo S. Tolentino, Jr., Ma. Marjorie S. Tolentino, Marilyn S. Tolentino, Michael Glenn St. Tolentino and Mylene S. Tolentino, their assigns, heirs and representatives to leave and vacate the portions of land they are occupying which are part of and inside Lot 647-E of the Subdivision Plan Csd-5627-D, covered by Transfer Certificate of Title No. T-43927 of the Office of the Register of Deeds of Quezon immediately upon this decision becoming final and executory;

(b) Commanding the aforementioned defendants [petitioners herein] jointly and severally, to pay the plaintiffs [respondents herein] the reasonable rental value of the areas occupied by the aforesaid defendants [petitioners herein] at the rate of P20,000.00 per annum from October 13, 1995 until possession thereof is returned to the plaintiff. [respondents herein]; and

(c) Enjoining the aforementioned defendants [petitioners herein] jointly and severally, to pay plaintiff [respondents herein] attorney's fees in the amount of P20,000.00, plus litigation expenses in the sum of P10,000.00.

SO ORDERED.[4]

Aggrieved, petitioners challenged the trial court's decision before the CA. The CA dismissed petitioners' appeal and affirmed the decision of the RTC. A motion for reconsideration was filed by the petitioners, but was denied by the CA for lack of merit.

Petitioners then filed this present Petition for Review on Certiorari under Rule 45, raising the following issues:

1. WHETHER OR NOT PETITIONERS WERE DENIED THEIR DAY IN COURT.
2. WHETHER OR NOT IT WAS PROPER TO INCLUDE THE GOVERNMENT THRU THE DEPARTMENT OF AGRICULTURE IN THIS CASE FOR A COMPLETE DETERMINATION OF THE CASE.
3. WHETHER OR NOT THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES FINDS APPLICATION IN THIS CASE.
4. WHETHER OR NOT ACCION PUBLICIANA WAS THE PROPER ACTION TO BE INSTITUTED IN THIS CASE.

Petitioners maintain that they were denied their day in court, because they were not allowed to present their evidence before the trial court which resulted in the denial of their right to due process.

We perused the records of the case and failed to see the lack of due process claimed by petitioners. On the contrary, petitioners were given more than ample opportunity to be heard through counsel. Lest it be forgotten, petitioners were first declared in default on August 27, 1996, for their failure to appear at the pre-trial conference. However, the trial court set aside the default order and the pre-trial conference was set and reset for several times. Nonetheless, petitioners failed to appear on January 9, 1998,[5] March 2, 1998,[6] May 18, 1999,[7] and March 21, 2000,[8] prompting the trial court to allow the respondents to present their evidence ex parte. Thereafter, judgment was rendered.

Sections 4 and 5, Rule 18 of the Rules of Court provides:

Section 4. Appearance of parties. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor, or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Section 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

From the foregoing, the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence ex parte and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.[9]

In the case at bar, the trial court gave petitioners every chance to air their side and even reconsidered its first order declaring petitioners in default. Notwithstanding, petitioners and their counsel failed to take advantage of such opportunity and disregarded the legal processes, by continuously failing to appear during the pre-trial of the case without any valid cause. Clearly, when the trial court allowed the respondents to present evidence ex parte due to the continued failure of the petitioners to attend the pre-trial conference, it did so in accordance with Rule 18 of the 1997 Rules of Civil Procedure and with due regard to the constitutional guarantee of due process. Plainly, petitioners cannot complain that they were denied due process. What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.[10]

In *The Philippine American Life & General Insurance Company v. Enario*,[11] the Court held that pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. The Court said that:

The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus:

Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:

- (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
- (b) The simplification of the issues;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The advisability of a preliminary reference of issues to a commissioner;
- (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
- (h) The advisability or necessity of suspending the proceedings; and
- (i) Such other matters as may aid in the prompt disposition of the action.[12]

Petitioners' repeated failure to appear at the pre-trial amounted to a failure to comply with the Rules and their non-presentation of evidence before the trial court was essentially due to their fault.

Petitioners' assertion that it was necessary to include the government, through the Department of Agriculture, as a party to the case, in order to have a complete determination of the case, is specious, as the same was never raised

before the RTC and the CA. It is settled that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.[13]

In the same manner, the Court cannot consider petitioners' allegation that respondents' failure to exhaust administrative remedies is fatal to the cause of the respondents, as this was not raised before the trial court.

In substance, the appeal of petitioners hinges on their possession over the subject lot by virtue of an alleged Fishpond Lease Agreement with the Department of Agriculture. They questioned the validity of the respondents' title by claiming that since the property is owned by the government, it is part of the public domain and, therefore, cannot be privately owned by the respondents. The petitioners' submission is not meritorious.

It is a rule that a certificate of title cannot be the subject of collateral attack. Section 48 of Presidential Decree No. 1529 provides that:

Section 48. Certificate not Subject to Collateral Attack. - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled, except in a direct proceeding in accordance with law.

Petitioners' attack on the legality of TCT No. T-43927, issued in the name of respondents, is incidental to their quest to defend their possession of the property in an accion publiciana, not in a direct action whose main objective is to impugn the validity of the judgment granting the title.[14] To permit a collateral attack on the title, such as what petitioners attempt, would reduce the vaunted legal indefeasibility of a Torrens title to meaningless verbiage.[15]

It must be pointed out that notwithstanding petitioners' submission that the subject property is owned by the Republic, there is no showing that the Office of the Solicitor General (OSG) or its representatives initiated an action for reversion of the subject property to become part of the public domain. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines.[16] Unless and until the land is reverted to the State by virtue of a judgment of a court of law in a direct proceeding for reversion, the Torrens certificate of title thereto remains valid and binding against the whole world.[17]

Besides, it must be emphasized that the action filed before the trial court is an accion publiciana, which is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title.[18] The objective of the plaintiffs in an accion publiciana is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[19]

It is undisputed that the subject property is covered by TCT No. T-43927, registered in the name of the respondents. On the other hand, petitioners do not claim ownership, but allege that they are leasing the portion they are occupying from the government.

Respondents' title over the subject property is evidence of their ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[20] It is conclusive evidence with respect to the ownership of the land described therein.[21] It is also settled that the titleholder is entitled to all the attributes of

ownership of the property, including possession.[22] Thus, the Court held that the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.[23]

Petitioners' argument that an accion publiciana is not the proper remedy available for the respondents, because more than ten (10) years had already elapsed since the dispossession of the respondents' property, does not hold water. As the registered owners, respondents' right to evict any person illegally occupying their property is imprescriptible. In the case of *Labrador v. Perlas*,[24] the Court held that:

x x x As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches. In *Bishop v. Court of Appeals*, we held, thus:

As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.[25]

As a final note, the Court finds no factual and legal basis for the award of attorney's fees and litigation expenses. The settled rule is that the matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. The same goes for the award of litigation expenses.[26] The reasons or grounds for the award thereof must be set forth in the decision of the court.[27] The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[28]

In the present case, the award of attorney's fees and litigation expenses was mentioned only in the dispositive portion of the RTC decision without any prior explanation and justification in its body, hence, the same is baseless and must be deleted.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals, dated October 18, 2007 and January 22, 2008, respectively, in CA-G.R. CV No. 78676, are AFFIRMED with MODIFICATION that the award of attorney's fees and litigation expenses is DELETED.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring, rollo, pp. 20-30.

[2] Rollo, pp. 38-40.

[3] This is in consonance with Rule 18, Section 5 of the Rules of Court, which provides:

Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

[4] Records, pp. 190-191.

[5] Id. at 157.

- [6] Id. at 159.
- [7] Id. at 168.
- [8] Id. at 172.
- [9] *The Philippine American Life & General Insurance Company v. Enario*, G.R. No. 182075, September 15, 2010, 630 SCRA 607, 616.
- [10] *Poltan v. BPI Family Savings Bank, Inc.*, G.R. No. 164307, March 5, 2007, 517 SCRA 430, 440.
- [11] *Supra* note 9, at 617.
- [12] Id. at 616-617.
- [13] *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).
- [14] *Urieta Vda. de Aguilar v. Alfaro*, G.R. No. 164402, July 5, 2010, 623 SCRA 130, 143.
- [15] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 380.
- [16] Public Land Act, Sec. 101.
- [17] *Ybañez v. Intermediate Appellate Court*, G.R. No. 68291, March 6, 1991, 194 SCRA 743, 751.
- [18] *Bejar v. Caluag*, G.R. No. 171277, February 15, 2007, 516 SCRA 84, 90.
- [19] *Urieta Vda. de Aguilar v. Alfaro*, *supra* note 14, at 140-141.
- [20] *Caña v. Evangelical Free Church of the Philippines*, G.R. No. 157573, February 11, 2008, 544 SCRA 225, 238.
- [21] *Urieta Vda. de Aguilar v. Alfaro*, *supra* note 14, at 141.
- [22] Id.
- [23] *Caña v. Evangelical Free Church of the Philippines*, *supra* note 20, at 238-239.
- [24] G.R. No. 173900, August 9, 2010, 627 SCRA 265, 272.
- [25] Id. at 272. (Emphasis supplied.)
- [26] *Spouses Samatra v. Vda. de Pariñas*, 431 Phil. 255, 267 (2002).
- [27] *Cagungun v. Planters Development Bank*, G.R. No. 158674, October 17, 2005, 473 SCRA 259, 274.
- [28] *Delos Santos v. Papa*, G.R. No. 154427, May 8, 2009, 587 SCRA 385, 397.

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