

REMEDIOS ANTONINO, PETITIONER, VS. THE REGISTER OF DEEDS OF MAKATI CITY AND TAN TIAN SU, RESPONDENTS.

G.R. No. 185663. June 20, 2012

Ponente: REYES, J.

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REYES, J.:

Nature of the Case

This is a petition for review under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 26, 2008 and Resolution[2] dated December 5, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 89145.

Factual Antecedents

Since March 21, 1978, petitioner Remedios Antonino (Antonino) had been leasing a residential property located at Makati City and owned by private respondent Tan Tian Su (Su). Under the governing lease contract, Antonino was accorded with the right of first refusal in the event Su would decide to sell the subject property.[3]

On July 7, 2004, the parties executed a document denominated as Undertaking Agreement[4] where Su agreed to sell to Antonino the subject property for P39,500,000.00. However, in view of a disagreement as to who between them would shoulder the payment of the capital gains tax, the sale did not proceed as intended.[5]

On July 9, 2004, Antonino filed a complaint against Su with the Regional Trial Court (RTC) of Makati City, for the reimbursement of the cost of repairs on the subject property and payment of damages. The complaint was raffled to Branch 149 and docketed as Civil Case No. 04-802.[6] Later that same day, Antonino filed an amended complaint to enforce the Undertaking Agreement and compel Su to sell to her the subject property.[7]

In an Order[8] dated December 8, 2004, the RTC dismissed Antonino's complaint on the grounds of improper venue and non-payment of the appropriate docket fees. According to the RTC, Antonino's complaint is one for specific performance, damages and sum of money, which are personal actions that should have been filed in the court of the place where any of the parties resides. Antonino and Su reside in Muntinlupa and Manila, respectively, thus Makati City is not the proper venue. Specifically:

The instant case is an action for specific performance with damages, a personal action, which 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 (Section 2, Rule 5 of the Rules of Court). Records show that plaintiff is a resident of 706 Acacia Avenue, Ayala Alabang Village, Muntinlupa City while defendant is a resident of 550 Sto. Cristo St., Binondo, Manila. Hence, the instant case should have been filed in the place of residence of either the plaintiff or defendant, at the election of the plaintiff. Contrary to the claim of plaintiff, the alleged written agreements presented by the plaintiff in her Amended Complaint do not contain any stipulation as to the venue of actions. x x x[9]

The RTC also ruled that it did not acquire jurisdiction over Antonino's complaint in view of her failure to pay the correct amount of docket fees. Citing *Manchester Development Corporation v. Court of Appeals*,[10] the RTC

ruled that:

Anent the non-payment of filing fees on the Amended Complaint, plaintiff alleges that no new assessment was made when the Amended Complaint was filed since there [were] no additional damages prayed for. The Manchester decision has been recently relaxed as to allow additional payment of the necessary fees if the Honorable Court so orders an assessment thereof.

The Court is not persuaded.

The Amended Complaint, which the Court notes to have been filed at 4:00 o'clock in the afternoon or few hours after the initial complaint was filed, further prays that judgment be rendered "ordering defendant to sell his property located at 1623 Cypress, Dasmariñas Village, Makati City covered by TCT No. 426900 to plaintiff in accordance with the terms and conditions stipulated in their agreement dated July 7, 2004 and ordering defendant to desist from selling his property to any other party other than plaintiff.", which makes the instant case also an action for Specific Performance in addition to the claim for Damages. However, the value of the described property was not stated in the prayer and no docket fees were paid. Thus, following the ruling of the Supreme Court in the case of Manchester Development Corporation vs. Court of Appeals, G.R. No. 75919, May 7, 1987, that the Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee, the instant case is hereby dismissed.[11]

On December 23, 2004, Su filed an Omnibus Motion,[12] praying for the cancellation of the notice of lis pendens, which Antonino caused to be annotated on the title covering the subject property and the issuance of a summary judgment on his counterclaims. Su, among others, alleged the propriety of cancelling the notice of lis pendens in view of the dismissal of the complaint and Antonino's failure to appeal therefrom.

On January 3, 2005, Antonino filed a Motion for Reconsideration,[13] claiming that her complaint is a real action and the location of the subject property is determinative of its venue. Alternatively, she submitted a certification issued by the Commission on Elections, stating that she is a resident of Makati City. She then prayed for the reinstatement of her complaint and issuance of an order directing the clerk of court to assess the proper docket fees. This was denied by the RTC in an Order[14] dated January 6, 2005, holding that there was non-compliance with Sections 4 and 5 of Rule 15 of the Rules of Court.

Antonino thus filed a Motion for Reconsideration[15] dated January 21, 2005, claiming that there was due observance of the rules on motions. Antonino alleged that her motion for reconsideration from the RTC's December 8, 2004 was set for hearing on January 7, 2005 and Su received a copy thereof on January 6, 2005. Antonino pleaded for a liberal interpretation of the rules as Su was notified of her motion before the hearing thereon and was not in any way prejudiced. She also reiterated her arguments for the reinstatement of her complaint.

In a Joint Resolution[16] dated February 24, 2005, the RTC denied Su's Omnibus Motion and Antonino's January 21, 2005 Motion for Reconsideration. The RTC refused to cancel the notice of lis pendens, holding that:

It is quite clear that the dismissal of the Amended Complaint was anchored on two grounds, e.g. (1) for improper venue and (2) for non-payment of docket fee. It is elementary that when a complaint was dismissed based on these grounds[,] the court did not resolve the case on the merits. Moreover, "a court cannot acquire jurisdiction over the subject matter of a case unless the docket fees are paid" x x x. Thus, the cause of action laid down in the complaint remains unresolved for proper re-filing before the proper court. Furthermore, the Supreme Court said: "The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time." x x x[17]

The RTC maintained its earlier ruling that Antonino's Motion for Reconsideration from the December 8, 2004 Order is pro-forma and did not suspend the running of the period to file an appeal. The RTC also reiterated that

Antonino's complaint is a personal action such that the proper venue therefore is either the City of Manila or Muntinlupa City.

On April 1, 2005, Antonino filed with the CA a petition for annulment of judgment.[18] Antonino prayed for the nullification of the RTC's Order dated December 8, 2004 dismissing her complaint, Order dated January 6, 2005 denying her motion for reconsideration and Joint Resolution dated February 24, 2005 denying her motion for reconsideration of the January 6, 2005 Order. According to Antonino, the RTC committed grave abuse of discretion amounting to lack of jurisdiction when it ruled that her action for the enforcement of the Undertaking Agreement is personal and when it deprived her of an opportunity to pay the correct amount of docket fees. The RTC's grave abuse of discretion, Antonino posited, was likewise exhibited by its strict application of the rules on motions and summary denial of her motion for reconsideration.

In its Decision[19] dated May 26, 2008, the CA dismissed Antonino's petition. While the CA recognized Antonino's faulty choice of remedy, it proceeded to resolve the issues she raised relative to the dismissal of her complaint. Thus:

It should be stressed that in this case, there is neither allegation in the petition, nor sufficient proof adduced showing highly exceptional circumstance to justify the failure of petitioner to avail of the remedies of appeal, petition for relief or other appropriate remedy through no fault attributable to [her] before filing this petition for annulment of judgment. In *Manipor v. Ricafort*, the Supreme Court held, thus:

If the petitioner failed to avail of such remedies without sufficient justification, he cannot avail of an action for annulment because, otherwise, he would benefit from his own inaction or negligence.

Notwithstanding the foregoing procedural infirmity, and in the interest of justice, we shall look into the issues raised and decide the case on the merit.

x x x x

A perusal of the allegations of the complaint unambiguously shows that petitioner seeks to enforce the commitment of private respondent to sell his property in accordance with the terms and conditions of their purported agreement dated July 7, 2004. By implication, petitioner does not question the ownership of private respondent over the property nor does she claim, by any color of title, right to possess the property or to its recovery. The action is simply for the enforcement of a supposed contract, and thus, unmistakably a personal action.

x x x x

Guided by the above rule (Section 2 of the 1997 Rules of Court), petitioner should have filed the case either in Muntinlupa City, where she resides, or in Manila, where private respondent maintains his residence. Other than filing the complaint in any of these places, petitioner proceeds with the risk of a possible dismissal of her case. Unfortunately for petitioner, private respondent forthwith raised improper venue as an affirmative defense and his stand was sustained by trial court, thus, resulting to the dismissal of the case.

Further, it is important to note that in a petition for annulment of judgment based on lack of jurisdiction, the petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction. The concept of lack of jurisdiction as a ground to annul a judgment does not embrace abuse of discretion. Petitioner, by claiming grave abuse of discretion on the part of the trial court, actually concedes and presupposes the jurisdiction of the court to take cognizance of the case. She only assails the manner in which the trial court formulated its judgment in the exercise of its jurisdiction. It follows that petitioner cannot use lack of jurisdiction as ground to annul the judgment by claiming grave abuse of discretion. In this case where the court refused to

exercise jurisdiction due to improper venue, neither lack of jurisdiction nor grave abuse of discretion is available to challenge the assailed order of dismissal of the trial court.[20] (Citations omitted)

Antonino filed a motion for reconsideration, which was denied by the CA in its Resolution dated December 5, 2008. [21]

Issue

The sole issue for the resolution of this Court is the propriety of Antonino's use of the remedy of a petition for annulment of judgment as against the final and executory orders of the RTC.

Our Ruling

In *Ramos v. Judge Combong, Jr.*, [22] this Court expounded that the remedy of annulment of judgment is only available under certain exceptional circumstances as this is adverse to the concept of immutability of final judgments:

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Rule 47 of the 1997 Rules of Civil Procedure, as amended, governs actions for annulment of judgments or final orders and resolutions, and Section 2 thereof explicitly provides only two grounds for annulment of judgment, i.e., extrinsic fraud and lack of jurisdiction. The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[23] (Citations omitted)

In *Barco v. Court of Appeals*, [24] this Court emphasized that only void judgments, by reason of "extrinsic fraud" or the court's lack of jurisdiction, are susceptible to being annulled.

The law sanctions the annulment of certain judgments which, though final, are ultimately void. Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.[25]

Apart from the requirement that the existence of "extrinsic fraud" or "lack of jurisdiction" should be amply demonstrated, one who desires to avail this remedy must convince that the ordinary and other appropriate remedies, such as an appeal, are no longer available for causes not attributable to him. This is clearly provided under Section 1, Rule 47 of the Rules of Court.

Antonino's recourse to annulment of judgment is seriously flawed and the reasons are patent. There is therefore no reason to disturb the questioned issuances of the RTC that are already final and executory.

A petition for annulment of judgment cannot serve as a substitute for the lost remedy of an appeal.

First, Antonino cannot pursue the annulment of the various issuances of the RTC, primary of which is the Order dated December 8, 2004, in order to avoid the adverse consequences of their becoming final and executory because of her neglect in utilizing the ordinary remedies available. Antonino did not proffer any explanation for her failure to appeal the RTC's Order dated December 8, 2004 and, thereafter, the Order dated January 6, 2005,

denying her Motion for Reconsideration dated January 3, 2005. Knowledge of rudimentary remedial rules immediately indicates that an appeal was already available from the Order dated December 8, 2004, as this is a final order as contemplated under Sections 2, 3 and 5 of Rule 41 of the Rules of Court, and there was no legal compulsion for Antonino to move for reconsideration. Nonetheless, since there is no bar for her to file a motion for reconsideration so as to give the RTC opportunity to reverse itself before elevating the matter for the appellate courts' review, appeal is the prescribed remedy from the denial of such motion and not another motion for reconsideration. While Section 1 of Rule 41 of the Rules of Court includes "an order denying a motion for new trial or reconsideration" in the enumeration of unappealable matters, this Court clarified in *Quelnan v. VHF Philippines, Inc.*[26] that such refers to a motion for reconsideration of an interlocutory order and the denial of a motion for reconsideration of an order of dismissal is a final order, therefore, appealable. Moreover, a second motion for reconsideration from a final judgment or order is prohibited, hence, can never interrupt the period to perfect an appeal.

The RTC may have been overly strict in the observance of the three-day notice rule under Section 4, Rule 15 of the Rules of Court contrary to liberal stance taken by this Court in cases when the purpose of such rule can be achieved by giving the opposing party sufficient time to study and controvert the motion.[27] Justice and equity would thus suggest that the fifteen-day period within which Antonino can appeal should be counted from her receipt on January 7, 2005[28] of the Order dated January 6, 2005 denying her Motion for Reconsideration dated January 3, 2005. Unfortunately, even liberality proved to be inadequate to neutralize the adverse consequences of Antonino's negligence as she allowed such period to lapse without filing an appeal, erroneously believing that a second motion for reconsideration is the proper remedy. While a second motion for reconsideration is not prohibited insofar as interlocutory orders are concerned,[29] the Orders dated December 8, 2004 and January 6, 2005 are final orders.

In fact, even if the period to appeal would be counted from Antonino's receipt of the Order dated February 24, 2005 denying her second motion for reconsideration, she interposed no appeal and filed a petition for annulment of judgment on April 1, 2005 instead. This, for sure, constitutes a categorical admission that the assailed issuances of the RTC had already become final and executory in view of her omission to perfect an appeal within the mandated period. By no means can her petition for annulment of judgment prosper as that would, in effect, sanction her blatant negligence or sheer obliviousness to proper procedure.

Let it be stressed at the outset that before a party can avail of the reliefs provided for by Rule 47, i.e., annulment of judgments, final orders, and resolutions, it is a condition sine qua non that one must have failed to move for new trial in, or appeal from, or file a petition for relief against said issuances or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail of those cited remedies without sufficient justification, he cannot resort to the action for annulment provided in Rule 47, for otherwise he would benefit from his own inaction or negligence.[30] (Citation omitted)

"Grave abuse of discretion" is not a ground to annul a final and executory judgment.

Second, a petition for annulment of judgment can only be based on "extrinsic fraud" and "lack of jurisdiction" and cannot prosper on the basis of "grave abuse of discretion". By anchoring her petition on the alleged grave abuse of discretion that attended the dismissal of her complaint and the denial of her two (2) motions for reconsideration, Antonino, is, in effect, enlarging the concept of "lack of jurisdiction". As this Court previously clarified in *Republic of the Philippines v. "G" Holdings, Inc.*,[31] "lack of jurisdiction" as a ground for the annulment of judgments pertains to lack of jurisdiction over the person of the defending party or over the subject

matter of the claim. It does not contemplate “grave abuse of discretion” considering that “jurisdiction” is different from the exercise thereof. As ruled in *Tolentino v. Judge Leviste*:^[32]

Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.^[33] (Citation omitted)

In fact, the RTC did not gravely abuse its discretion or err in dismissing Antonino’s complaint. The RTC was correct in classifying Antonino’s cause of action as personal and in holding that it was instituted in the wrong venue. Personal action is one that is founded on privity of contracts between the parties; and in which the plaintiff usually seeks the recovery of personal property, the enforcement of a contract, or recovery of damages. Real action, on the other hand, is one anchored on the privity of real estate, where the plaintiff seeks the recovery of ownership or possession of real property or interest in it.^[34] Antonino’s following allegations in her amended complaint show that one of her causes of action is one for the enforcement or consummation of a contract, hence, a personal action:

XII

On July 7, 2004, plaintiff and defendant executed a document entitled “Undertaking Agreement” (copy of which is hereto attached as Annex H) wherein defendant agreed to sell said property to plaintiff “who has leased said property since March 21, 1978 up to the present” with the plaintiff paying a downpayment of \$50,000.00 US dollars the following day, July 8, 2004.

x x x x

XIV

Defendant also refused to accept the \$50,000.00 US Dollars and was about to tear up the document they previously signed the day before when plaintiff prevented him from doing so.

XV

Consequently, plaintiff discovered that defendant was already negotiating to sell the said property to another Chinese national who incidentally is also one of plaintiff’s buyers.

x x x x

Premises considered, in the interest of substantial justice, it is most respectfully prayed that after due hearing that judgment be rendered:

1. Ordering defendant to sell his property located at 1623 Cypress, Dasmariñas Village, Makati City covered by TCT No. 426900 to plaintiff in accordance with the terms and conditions stipulated in their agreement dated July 7, 2004.

x x x x^[35]

Antonino’s cause of action is premised on her claim that there has already been a perfected contract of sale by virtue of their execution of the Undertaking Agreement and Su had refused to comply with his obligations as seller. However, by claiming the existence of a perfected contract of sale, it does not mean that Antonino acquired title to the subject property. She does not allege otherwise and tacitly acknowledges Su’s title to the subject property by asking for the consummation of the sale.

That there is a private document supposedly evidencing the alleged sale does not confer to Antonino title to the subject property. Ownership is transferred when there is actual or constructive delivery and the thing is considered delivered when it is placed in the control or possession of the buyer or when the sale is made through a public instrument and the contrary does not appear or cannot be clearly inferred.[36] In other words, Antonino's complaint is not in the nature of a real action as ownership of the subject property is not at issue.

Moreover, that the object of the alleged sale is a real property does not make Antonino's complaint real in nature in the absence of a contrary claim of title. After a contract of sale is perfected, the right of the parties to reciprocally demand performance, thus consummation, arises – the vendee may require the vendor to compel the transfer the title to the object of the sale[37] and the vendor may require the payment of the purchase price.[38] The action to cause the consummation of a sale does not involve an adverse claim of ownership as the vendor's title is recognized and the vendor is simply being asked to perform an act, specifically, the transfer of such title by any of the recognized modes of delivery.

Considering that the filing of the complaint in a wrong venue sufficed for the dismissal thereof, it would be superfluous to discuss if Antonino's non-payment of the correct docket fees likewise warranted it.

At any rate, even if the RTC erred in ordering the dismissal of her complaint, such had already become final and executory and will not be disturbed as it had jurisdiction and it was not alleged, much less, proved that there was extrinsic fraud. Moreover, annulment of the assailed orders of the RTC will not issue if ordinary remedies, such as an appeal, were lost and were not availed of because of Antonino's fault. Litigation should end and terminate sometime and somewhere. It is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party should not be deprived of the fruits of the verdict.[39]

WHEREFORE, premises considered, the petition is DENIED for lack of merit and the Decision dated May 26, 2008 and Resolution dated December 5, 2008 of the Court of Appeals in CA-G.R. SP No. 89145 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Pampio A. Abarintos, concurring; rollo, pp. 28-35.

[2] Id. at 37-38.

[3] Id. at 29.

[4] Id. at 69.

[5] Id. at 29.

[6] Id. at 264-268.

[7] Id. at 269-275.

[8] Id. at 335-337.

[9] Id. at 336.

[10] 233 Phil. 579 (1987).

- [11] Rollo, pp. 336-337.
- [12] Id. at 338-350.
- [13] Id. at 351-355.
- [14] Id. at 356.
- [15] Id. at 357-363.
- [16] Id. at 393-396.
- [17] Id. at 394-395.
- [18] Id. at 397-419.
- [19] Supra note 1.
- [20] Id. at 32-35.
- [21] Supra note 2.
- [22] 510 Phil. 277 (2005).
- [23] Id. at 281-282.
- [24] 465 Phil. 39 (2004).
- [25] Id. at 64.
- [26] G.R. No. 145911, July 7, 2004, 433 SCRA 631.
- [27] See *Preysler v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA, 636, 642-643.
- [28] Rollo, p. 371.
- [29] See *Philippine National Bank v. Intestate Estate of Francisco De Guzman*, G.R. No. 182507, June 18, 2010, 621 SCRA, 131, 139.
- [30] *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*, 456 Phil. 414, 421-422 (2003).
- [31] 512 Phil. 253 (2005).
- [32] 485 Phil. 661 (2004).
- [33] Id. at 674.
- [34] *Tomawis v. Balindong*, G.R. No. 182434, March 5, 2010, 614 SCRA 354, 365. (Citations omitted)
- [35] Id. at 271-274.
- [36] See *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 486.
- [37] Civil Code of the Philippines, Article 1475.
- [38] Civil Code of the Philippines, Article 1458.
- [39] *Republic of the Philippines v. "G" Holdings, Inc.*, supra note 31 at 266.

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