

**SPOUSES DONATO RAMIREZ AND MARIA RAMIREZ, PETITIONERS,
VS. HON. COURT OF APPEALS, HON. REGIONAL TRIAL COURT OF
PINAMALAYAN, ORIENTAL MINDORO AND IGMEDIO REYES,
RESPONDENTS.**

G.R. No. 76366. July 03, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The land in question is a 1,200 meters long and 15 meters wide strip of land denominated as the Malitbog-Naksib Narra Road and situated in Bongabong, Oriental Mindoro. This was donated sometime in 1923 by the predecessor-in-interest of herein private respondent Igmedio Reyes to the government for the construction and utilization thereof as provincial-municipal road. However, the government failed to construct a road or at least improve the land. So on October 9, 1959, the donor in writing, revoked the donation on the ground that the purpose for which the donation was made was never pursued.

In 1960, the government appropriated another strip of land from the titled property of the private respondent and thereupon, constructed the present and existing Malitbog-Naksib Narra Road. Later, in government forms, the government and private respondent executed Road Right of Way Agreements (Petition, Annex "D" and Annex "F," Rollo, pp. 27-30 and 39-42) whereby the originally donated strip of land was exchanged with the strip of land where the Malitbog-Naksib Narra Road was constructed.

After the execution of the two (2) Road Right of Way Agreements, private respondent tried to take possession of the exchanged area. However, petitioners, together with others were found in actual possession and cultivation thereof. Thus, private respondent instituted Civil Case No. R-184 for Recovery of Ownership and Possession at the then Court of First Instance of Oriental Mindoro, Branch II at Pinamalayan. Defendants therein, now petitioners, interposed the defense that they are:

"3. x x x in rightful possession and occupation of the abandoned proposed road that adjoins their parcels of land either as reparation (sic) owners or to compensate them or a exchange for separate portions of their parcels of land which were traversed by the Miaje Sigañgi road constructed by the government x x x." (Answer filed in Civil Case No. R-184, Annex "3," Rollo, p. 338)

In the course of the pre-trial proceedings in Civil Case No. R-184, petitioners, with some of the other defendants, manifested that they are no longer interested in the land subject matter of this case so that they were indeed dropped from the case. The decision of the court in that case stated:

"That per conference with the defendants Isidoro Amparo, Bonifacio Amparo, Marciano Casao, Donato Ramirez, Guillermo Brigido, Marina Salcedo and the Highway District Engineer, they are no longer interested in the land subject matter of this case so that he is agreeable that said defendants be dropped from the case." (p. 3, Decision, Civil Case No. R-184, Rollo, p. 33)

This decision dated February 9, 1976 became final as no appeal by any of the parties thereto was ever interposed. In fact, it had been fully executed complied with and satisfied. It cannot, however, be enforced against petitioner herein who were dropped as parties as they promised to vacate. Hence, on November 8, 1978, private respondent filed another suit for recovery of ownership and possession against petitioners in Civil Case No. R-540.

After service of summons, petitioners filed their answer in court but never furnished any copy of such answer to private respondent. Moreover, on the scheduled pre-trial conference, petitioner Donato Ramirez failed to appear, although his wife, Maria Ramirez appeared and informed the trial court that her husband is not available. Thus, by reason of the failure to furnish private respondent with a copy of an answer and to appear during the pre-trial conference, private respondent moved for the declaration of petitioners in default. The trial court resolved to grant the motion and declared petitioners in default. Despite receipt of a copy of the order by petitioners on June 30, 1980, they did not ask to set aside the order of default nor did they seek any relief from said order.

After presentation of evidence ex parte, the trial court rendered judgment on November 8, 1982 as follows:

“(a) Ordering the defendant to surrender the possession of the land in question in favor of Igmedio Reyes, with a length of 1,200 meters and with a width of 15 meters of the abandoned old Malitbog-Naksib Road pursuant to the Road Right of Way Agreement for National Road, Exh. "A";

“(b) Ordering the defendant to pay the plaintiff the amount of P1,500 yearly from the year 1966 up to the present;

“(c) Ordering the defendant to pay the attorney's fees in the amount of P3,000.00; and

“(d) Ordering the defendant to pay the costs of this suit.

"SO ORDERED." (Rollo, p. 46-47)

From this judgment, petitioners filed an ordinary appeal before the then Intermediate Appellate Court. This appeal docketed as AC G.R. CV No. 04164, however, was dismissed when petitioners failed to file appellants' brief. The order dismissing the appeal became final and entry of judgment was issued on April 2, 1985.

Upon motion of private respondent, a motion for writ of execution was issued on May 13, 1985. To prevent the implementation of the writ, petitioners instituted on June 10, 1985 before the Regional Trial Court of Oriental Mindoro, Civil Case No. 770 for annulment of judgment. This complaint was dismissed for lack of jurisdiction.

On July 17, 1985, the Deputy Sheriff of the trial court levied properties of petitioners and by notice of sheriff's sale dated August 7, 1985 published the said notice of auction sale for September 25, 1985. The notice of sheriff's sale was published in a newspaper of general circulation on September 2, 9 and 16, 1985.

On September 12, 1985, petitioners filed again before the then Intermediate Appellate Court another annulment suit docketed as CA G.R. No. SP 07107. In view of the pendency of this annulment suit, petitioners filed before the trial court an urgent motion for a stay of the implementation of the writ of execution. Petitioners succeeded in securing on September 23, 1985 an order granting the motion to stay the writ of execution.

However, on October 1, 1985, the trial court issued an amended order, worded as follows:

"In the interest of justice considering that Notice of Auction Sale had already been published in the newspaper prescribed by law, the auction sale of the levied properties of the defendant is hereby re-scheduled on October 29, 1985, at 10:00 o'clock in the morning without the necessity of republication since it was defendant who sought the postponement of said auction sale on September 25, 1985. (Petition, Annex "K," Rollo, p. 57)

The motion for reconsideration of the order rescheduling auction sale without republication was denied by the

trial court. Hence, a notice of appeal from said orders as well as an extension of time to file petition for review on certiorari were filed by petitioners. However, they did not pursue further said remedies and inasmuch as no restraining order was issued by the appellate court in the petition for annulment of judgment suit (CA G.R. No. SP 07107), the auction sale of the levied properties of the petitioners was held on October 29, 1985 and the Sheriff's Certificate of Sale was executed on October 30, 1985 in favor of the winning bidder.

Thus, on September 23, 1986, when the decision of the respondent appellate court in CA-G.R. SP No. 07107 was promulgated dismissing the complaint for annulment of judgment, the auction sale implementing the judgment sought to be annulled had already been held. Besides, within the one-year period after the date of the auction sale, the execution of the Sheriff's Certificate of Sale and the registration thereof on November 6, 1985, petitioners never attempted to redeem the auctioned properties. On November 17, 1986, the Sheriff executed the Officer's Final Deed of Sale in favor of the successful bidder and the same was duly registered. On March 3, 1987, the possession of the sold properties were delivered to the private respondent.

In dismissing the complaint for annulment of judgment, the respondent appellate court held, to wit:

"The rule is well settled. A final judgment can be set aside only on grounds of (a) lack of jurisdiction or lack of due process or (b) that the judgment was obtained by means of extrinsic or collateral fraud (*Gallanosa v. Arcangel*, 83 SCRA 676). The extrinsic or collateral fraud which invalidates a final judgment 'must be such as prevented the unsuccessful party from fully and fairly presenting his case or defense; it must be such as prevented the losing party from having an adversary trial of the issue.' (*Laxamana v. Court of Appeals*, 87 SCRA 48)

"These grounds are not present in the case at bar. The jurisdiction of the court a quo is not assailed by the plaintiff. The alleged errors in the Decision are mere errors of judgment and not errors of jurisdiction. Plaintiff cannot also claim that he was prevented from presenting his defense in the court a quo. He did not answer the complaint and was declared in default. On appeal of his case, he did not file his appellant's brief and resultantly his appeal was dismissed." (Rollo, p. 72)

The questions presented now in this petition are as follows:

I

"THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT ANNULING THE DECISION OF THE REGIONAL TRIAL COURT AND THE DEFAULT ORDER, BOTH HAVING BEEN ISSUED IN VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS.

II

"THE REGIONAL TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN DECLARING THE ROAD RIGHT OF WAY AGREEMENT FOR NATIONAL ROAD VALID DESPITE ITS DEFECTS IN FORM AND SUBSTANCE.

III

"THE REGIONAL TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT A PUBLIC ROAD COULD BE AN OBJECT OF TRANSACTION.

IV

"THE REGIONAL TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN RE-SCHEDULING AND HOLDING THE AUCTION SALE WITHOUT REPUBLICATION." (Rollo, p. 262)

It is notable that from the inception of this case before the Regional Trial Court up to the time it reached the Court of Appeals in both instances and then this Court, there was a virtual lack of diligent effort on the part of petitioners to pursue their defense. First, there was failure to furnish a copy of the answer to the plaintiff, respondent herein. Then, there was failure to appear during pre-trial. Hence, they were declared as in default. Then, instead of seeking relief from the judgment rendered by default, petitioners filed an ordinary appeal before the Intermediate Appellate Court which was, however, dismissed for failure to file appellants' brief. A suit for annulment of judgment was filed with the Regional Trial Court of Oriental Mindoro but this was dismissed for lack of jurisdiction. In spite of the dismissal, petitioners did nothing, only to awaken when the writ of possession was issued against them by filing another suit for annulment. Again, after receiving a copy of the questioned Court of Appeals' decision on September 25, 1987, petitioners filed a motion for extension of time to file motion for reconsideration only on October 13, 1986, or exactly eighteen (18) days from receipt of the copy of the decision. Hence, the decision sought to be reviewed had already become final as early as October 10, 1986 as decisions of any courts become final after fifteen (15) days from receipt of the copy thereof.

Not only was the motion for extension of time filed out of time but also equally barred by the mandatory injunction in *Habaluyas Enterprises Inc. v. Japson, et al.*, G.R. No. 70895, August 5, 1985; 138 SCRA 46 against the filing of an extension of time to file a motion for reconsideration. The petition thereafter filed with this Court likewise failed to comply with the formal requirements as it was filed without a verified statement of material dates to determine the timeliness of the filing of the petition and of the payment of the docket and legal research fund fees and lacks proofs of service to the Court of Appeals and to the adverse party.

Even after a judicious consideration of the arguments and counter-arguments of the parties herein on the merits of the case, We find that respondent Court of Appeals did not commit any reversible error in dismissing petitioners' suit filed only on September 12, 1985 for annulment of a judgment dated November 8, 1982.

There is no means whereby the defeated party may procure a final and executory judgment to be set aside with a view to the renewal of the litigation beyond the period for seeking relief from a final order or judgment under Rule 38, Rules of Court, unless (a) the judgment is void for want of jurisdiction or for lack of due process of law, or (b) it has been obtained by fraud (*Anuran v. Aquino*, 38 Phil. 29; *Banco Español--Filipino v. Palanca*, 37 Phil. 921; *Garchitorena v. Sotelo*, 74 Phil. 25; *Gallanoza v. Arcangel*; L-29300, June 21, 1978, 83 SCRA 676; *Laxamana v. Court of Appeals*, L-37317, November 24, 1978, 87 SCRA 48).

In the case at bar, petitioners do not question the jurisdiction of the court over the parties and the subject matter of the controversy. It is noteworthy that in petitioners' answer to the complaint in Civil Case No. 540, they never questioned the due execution nor the genuineness of the Road Right of Way Agreements. They merely claimed in their answer that they were the rightful possessors of the road that adjoins their parcels of land, either as riparian owners or as compensation for their land that has been taken over by the government in constructing the *Miaje?Sigañgi Road*. Such an answer, by its nature raises no issue against the jurisdiction of the trial court.

Petitioners now assert as their first ground for allowance of the writ of certiorari that they were denied due process of law when petitioner Donato Ramirez was declared in default not because he failed to answer but because he had failed to furnish private respondent Igmedio Reyes a copy thereof and because he and his lawyer had failed to appear at the pre-trial conference. It should be noted that denial of due process was not one of the grounds raised before the respondent Court of Appeals in seeking annulment of the judgment in Civil Case No. R-540.

Petitioners merely assigned three (3) errors below, viz: (1) excess of P1,000.00 in the award of attorney's fees; (2) doubtful genuineness of the Road Right of Way Agreement, and (3) the strip of land is cadastral road. Verily, none of the valid grounds prescribed for annulment of a final judgment was alleged. Petitioners, at this late stage of the conflict, cannot validly claim "deprivation of petitioners' right to be heard." As deprivation of the right to be heard before the trial court was never raised as an issue in the annulment suit filed before the Court of Appeals, it cannot be raised as an issue in this petition for review as issues now are limited to whether the respondent Court of Appeals committed error in rendering the questioned judgment. In *Liang Lumber Co. v. Liang Timber Co., Inc.*, G.R. No. 38685, March 31, 1977, this Court held that since issues are limited to those presented in the principal pleading, they cannot be raised on appeal, much more in a mere incidental pleading.

Moreover, there was no error in the trial court's order declaring petitioner Donato Ramirez in default. The failure to furnish a copy of the answer to the adverse party, in itself, is sufficient and valid basis for petitioners' default. The non-appearance of petitioner Donato Ramirez during the scheduled pre-trial for alleged injury, without presenting a medical certificate or any proof for that injury, is not justified and also a valid ground for declaration of default. Thus, petitioners' complaint that they were deprived of their right to be heard is stripped of legal and factual basis.

On the merits of the case, petitioners harped on the alleged invalidity of the two (2) Road Right of Way Agreements claiming that the strip of land covered by said agreements is a cadastral road and hence a property belonging to public domain. But the Provincial Government and/or the Republic of the Philippines never questioned the due execution or intrinsic validity of the two agreements.

Petitioners not being signatories to the documents or for whose benefits such contracts were executed have no personality to question the validity thereof. Even under the guise of pursuing a cause for public interest, petitioners' argument would not merit a scintilla of belief as their real intent to devote the land in question for their own use and benefit as an agricultural land is very evident in their pleadings.

Finally, petitioners impugned the validity of the auction sale without republication. The governing rules on notice of sale of real property on execution explicitly ordains publication in a newspaper of general circulation once a week within twenty (20) days before the sale (par. C, Sec. 15, Rule 39, Revised Rules of Court). There is no dispute that the first scheduled auction sale on September 25, 1985 have complied with all the requirements imposed by the Rules. The postponement of such sale was due to petitioners' motion for time to secure injunctive relief from the Intermediate Appellate Court, which was granted ex-parte. Petitioners should not be allowed to impugn the result of their initiative for several reasons. Firstly, the questioned auction sale on October 29, 1985 without republication was never raised as an issue in CA-G.R. No. 07107, the annulment suit despite the pendency thereof. The objection that the publication preceeding the auction was insufficient cannot be considered at this stage of the proceeding inasmuch as it was not raised in the first instance and does not affect the jurisdiction of the court (*Ramiro v. Graño, et al.* 54 Phil. 744, citing *Tan Machan v. Gan Aya dela Trinidad*, 3 Phil. 684; *United States v. Inductivo*, 40 Phil. 84). Secondly, petitioners are estopped or barred from impugning the validity of auction sale without republication because they filed an extension of time to file a petition for review with the Intermediate Appellate Court after the denial of their motion for reconsideration of the trial court's order rescheduling auction sale without republication. Despite grant of said extension, petitioners did not file said petition. In effect, such failure to file the petition is an acquiescence to the validity of the trial court's orders of October 1, 1985 and of October 29, 1985. Thirdly, they cannot attach reversible error on the said sale after the lapse of more than one (1) year from the date of the auction sale and after the expiration of the redemption period; more so, because a final deed of sale in favor of respondent had already been executed in favor of the private respondent.

ACCORDINGLY, for the foregoing reasons, this instant petition for review is hereby DENIED and the decision of respondent Court of Appeals dated September 23, 1986 dismissing the complaint for annulment and its resolution dated November 3, 1986 denying the motion for reconsideration are hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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