

SECOND DIVISION

[G.R. No. 188029, September 02, 2020]

**ARTURO C. CALUBAD, PETITIONER, VS. BILLY M. ACERON AND
OLIVER R. SORIANO,^[1] RESPONDENTS.**

DECISION

HERNANDO, J.:

Challenged in this Petition [for Review on *Certiorari*]^[2] are the September 19, 2007 Resolution^[3] and May 29, 2009 Resolution^[4] of the Court of Appeals (CA) in CA-G.R. SP No. 100249 dismissing outright the Petition for Annulment of Final Resolution^[5] under Rule 47 of the Rules of Court filed by Arturo C. Calubad (Calubad) on the ground that he had other available remedies other than a petition for annulment under Rule 47 and there being no extrinsic fraud committed against him.

The Antecedents

Sometime in April 1992, Billy M. Acheron (Acheron) and Oliver R. Soriano (Oliver) entered into an unnotarized Deed of Conditional Sale^[6] for a consideration of P1.6 million over a parcel of land located in Quezon City with an area of 760 square meters and covered by Transfer Certificate of Title (TCT) No. 15860 registered in the name of spouses Francisco R. Soriano and Rosa R. Soriano (Spouses Soriano). The latter had donated the subject property to their son, Oliver. Since the title over the subject property was yet to be reconstituted in the name of Oliver, the parties entered into a Deed of Conditional Sale which provided that Oliver shall cause the reconstitution of title and transfer of ownership to Acheron. Meanwhile, Acheron may take possession of the subject property upon payment of P300,000.00.^[7]

In October 1992, the title was reconstituted, prompting Acheron to demand from Oliver the execution of a Deed of Absolute Sale. However, Oliver informed Acheron that he would cancel the Deed of Conditional Sale. Hence, on October 19, 1993, Acheron filed a Complaint^[8] before the Regional Trial Court (RTC) of Quezon City, Branch 96 docketed as Civil Case No. Q-93-18011 praying that Oliver execute the Deed of Absolute Sale and pay damages. On the other hand, Oliver claimed that he had to cancel the Deed of Conditional Sale because Acheron failed to pay the total amount of the contract.^[9]

On December 26, 1996, the RTC in Civil Case No. Q-93-18011 rendered its Decision^[10] in favor of Acheron and ordered Oliver to execute a Deed of Absolute Sale over the subject property and pay P25,000.00 as attorney's fees. Acheron filed an appeal^[11] before the CA praying for payment of moral and exemplary damages

and additional attorney's fees. However, the appellate court, in its February 18, 2002 Decision^[12] denied his appeal and affirmed the RTC's Decision dated December 26, 1996 which became final and executory on August 5, 2003. Thereafter, on July 4, 2003, the trial court granted the motion for writ of execution filed by Oliver.^[13]

On August 5, 2003, the Register of Deeds of Quezon City issued TCT No. N-253373^[14] in the name of Oliver. Thereafter, on November 5, 2003, Oliver informed Aceron of the notarial rescission of the Deed of Conditional Sale and demanded that he vacate the subject property within five days.^[15]

On December 17, 2003, Oliver obtained a loan in the amount of P1.6 million from petitioner Calubad and as a security therefor, he mortgaged the subject property covered by TCT No. N-253373.^[16]

Thereafter, on January 9, 2004, Aceron moved for the execution of the RTC's December 26, 1996 Decision which was granted by the trial court in its March 5, 2004 Order.^[17] Thus, on April 1, 2004, Aceron deposited the amount of P970,000.00 at the Office of the Clerk of Court.^[18] However, Oliver failed to deliver TCT No. N-253373 as ordered.

Hence, Aceron moved that Oliver be divested of his title over the subject property and that it be transferred to him.^[19] However, Oliver manifested that he could not surrender the title because it was already mortgaged to petitioner Calubad before the issuance of the RTC's March 5, 2004 Order.^[20] On July 23, 2004, Aceron moved that Oliver's title and ownership over the subject property be transferred to his name, free from all liens and encumbrances, pursuant to the CA's Decision dated February 18, 2002.^[21]

On October 3, 2004, Aceron filed an Omnibus Motion^[22] praying that: (a) petitioner Calubad deliver TCT No. N-253373 in the name of Oliver; (b) Oliver and Calubad refrain from doing acts that would adversely affect the delivery of TCT No. N-253373; (c) Oliver execute a Deed of Absolute Sale in favor of Aceron; (d) Oliver be divested of his title over the subject property; and (e) the ownership over the subject property be transferred to Aceron free from all liens and encumbrances.

On December 13, 2004, the trial court granted^[23] Aceron's Omnibus Motion which became final and executory on January 20, 2005, to wit:

WHEREFORE, the motion is GRANTED. The Court hereby declares that:

1. Defendant Oliver Soriano is hereby divested of his ownership over the property covered by TCT No. N-253373. Defendant may withdraw the amount deposited by plaintiff totaling to P970,000.00 as payment of the balance of the purchase price as DIRECTED by this court in its 05 March 2004 Order;

2. The Register of Deeds of Quezon City is hereby DIRECTED to issue a new title in the name of plaintiff BILLY ACERON free from all

encumbrances and/or liens which shall have the force and effect of a conveyance in due form of law;

3. The mortgage and consequent foreclosure sale as null and void.

SO ORDERED.^[24]

Hence, Calubad filed a petition^[25] under Rule 65 before the appellate court docketed as CA-G.R. SP No. 88415, assailing the RTC's Resolution dated December 13, 2004 on the ground that it did not acquire jurisdiction over his person as he was not a party to the case and was not given a day in court. Thus, he could not be subject of the assailed Order.

On March 14, 2006, the appellate court rendered its Decision^[26] in CA-G.R. No. SP No. 88415 dismissing Calubad's petition for being an improper remedy. Calubad moved for the reconsideration thereof which was denied by the appellate court in its March 27, 2007 Resolution.^[27]

Calubad filed a petition for review on *certiorari* under Rule 45 before this Court. However, the same was denied in our June 6, 2007 Resolution which became final and executory on August 1, 2007.^[28]

Assailed Ruling of the Court of Appeals:

On August 23, 2007, Calubad filed a Petition for Annulment of Final Resolution^[29] under Rule 47 of the Rules of Court docketed as CA-G.R. SP No. 100249, which sought to annul the RTC's Resolution dated December 13, 2004 in Civil Case No. Q-93-18011.

However, on September 19, 2007, the appellate court dismissed^[30] outright Calubad's petition on the ground that he had been negligent in not pursuing an action or remedy to protect his legal interest upon knowledge of Acheron and Oliver's pending case as per his receipt of a copy of Acheron's Manifestation with Prayer to Reset Hearing on the Omnibus Motion dated October 26, 2004.

Section 1, Rule 47 of the Rules of Court governs the annulment of judgments or final orders and resolutions of the RTC in which ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner. The appellate court ruled that petitioner had the opportunity to institute an appropriate legal action rather than the annulment of resolution under Rule 47 of the Rules of Court. In addition, the appellate court held that no extrinsic fraud was committed against petitioner.

Calubad moved for the reconsideration of the CA's September 19, 2007 Resolution. However, it was denied by the appellate court in its May 29, 2009 Resolution.^[31] Hence, Calubad filed this Petition for Review on *Certiorari* under Rule 45.

ISSUES

The issues to be resolved in this case are the following:

- I. Whether or not the appellate court has jurisdiction to: (a) cancel the annotations of the real estate mortgage and certificate of sale in favor of Calubad on TCT No. N-253373; (b) declare the real estate mortgage and foreclosure sale as null and void; and (c) declare Calubad as mortgagee in bad faith, despite the fact that Calubad is not a party to Civil Case No. Q-93-18011 and there was no notice of *lis pendens* on TCT No. N-253373.
- II. Whether or not the appellate court is correct in dismissing the petition for annulment and in finding that Calubad has available remedies other than a petition for annulment of judgment or final resolution under Rule 47 of the Rules of Court.

Petitioner Calubad argues that there was no notice of *lis pendens* of Civil Case No. Q-93-18011 on TCT No. 15860 registered in the name of the Spouses Soriano nor on TCT No. N-253373 registered in the name of Oliver. He was not informed by Oliver or anyone regarding the existence of Civil Case No. Q-93-18011 before he agreed for the subject property covered by TCT No. N-253373 to be used as a security for the loan he extended to Oliver. Acheron had enough opportunity to file a notice of *lis pendens* but the latter failed to do so. Hence, petitioner Calubad contends that he cannot be faulted when he relied on TCT No. N-253373.

He further claims that pursuant to the ruling in *Lim v. Chuatoco*,^[32] he has the right to rely on the correctness of the certificate of title and he is not obliged to go beyond the certificate to determine the condition of the property. He contends that he is not a party to Civil Case No. Q-93-18011. Although he was furnished a copy of Acheron's Omnibus Motion dated October 3, 2004, he received the same after the scheduled hearing. In fact, Acheron filed a Manifestation with Prayer to Reset Hearing of the Omnibus Motion dated October 26, 2004 as there was no proof of service upon Oliver or his counsel, or petitioner Calubad. However, the trial court did not reset the hearing of Acheron's Omnibus Motion. Instead, it issued the assailed Resolution dated December 13, 2004.

Moreover, even if he received a copy of the said Omnibus Motion, petitioner Calubad opines that he has no personality to submit a comment or an opposition thereto as he was not a party to the said case. He also cannot file a motion for intervention as the case became final and executory in 2002, long before his receipt of Acheron's Omnibus Motion dated October 3, 2004. In addition, he cannot file a petition for relief from judgment under Rule 38 as it is available only to a party to the case where judgment or final order is made through fraud, accident, mistake or excusable negligence.

Instead, petitioner Calubad explains that he filed a petition for review on *certiorari* before the CA which was however dismissed on the ground of improper remedy. Hence, he filed this petition for annulment of judgment or resolution under Rule 47.

He prayed that the CA's decision declaring the real estate mortgage and foreclosure sale as null and void be reversed and set aside and that the certificate of sale on the new title issued to Acheron be cancelled on the ground that as a party not included in the case, he cannot be bound by the said decision.

On the other hand, Acheron cites *Vda. De Medina v. Cruz*^[33] where the petitioner therein acquired the right over the subject property after the original action was commenced and became final and executory. Similarly, herein petitioner Calubad acquired the right of a mortgagee after Civil Case No. Q-93-18011 has attained finality. Hence, having the force of law, it should be enforced against petitioner Calubad even though he is not a party thereto.

Moreover, petitioner Calubad cannot be considered a mortgagee in good faith because during the execution of the mortgage contract, Acheron was in possession of the subject property. Later, Oliver, accompanied by armed men, forcibly took possession of the subject property and Acheron's properties. Clearly, at that time, petitioner Calubad already knew of the trial court's decision in Civil Case No. Q-93-18011. Lastly, Acheron contends that as correctly found by the appellate court, there is no extrinsic fraud perpetrated against petitioner Calubad.

Oliver, on the other hand, opines that he was in good faith when he rescinded the Deed of Conditional Sale because Acheron failed to pay the balance of the purchase price. In fact, Acheron only made payment eleven (11) years after it had become due by depositing the amount with the court. By that time, the value of the subject property had considerably appreciated. Oliver also claims that he filed a motion for execution on May 21, 2003. However, Acheron delayed the execution of the judgment.

He further claims that the mortgage contract was done in good faith because it was executed after the rescission of the Deed of Conditional Sale and before the consignment of the balance of the purchase price. Thus, he cannot be faulted for mortgaging the subject property to petitioner Calubad.

The Court's Ruling

We find the petition without merit.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy.^[34] In addition, it may be invoked only on two grounds, namely, extrinsic fraud and lack of jurisdiction. None of these grounds are present in this case.

First, the RTC acted within its jurisdiction when it resolved the motion for execution filed by Acheron and consequently issued Resolution dated December 13, 2004 which divested Oliver of his ownership over the subject property and directed the Register of Deeds to issue a new title in the name of Acheron. It further declared petitioner Calubad's real estate mortgage and foreclosure sale as null and void.

Jurisdiction is the authority to decide a case, and not the decision rendered therein.^[35] Evidently, the RTC acquired jurisdiction over the subject matter and over the