

THIRD DIVISION

[G.R. No. 165938, November 25, 2009]

**ROGELIO DIZON, PETITIONER, VS. PHILIPPINE VETERANS
BANK, RESPONDENT.**

DECISION

PERALTA, J.:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court is the Resolution^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72856, dated August 25, 2003, which dismissed herein petitioner's appeal, and its Resolution^[2] dated November 2, 2004 denying petitioner's motion for reconsideration.

The undisputed facts are as follows:

Herein petitioner Rogelio Dizon and his wife Corazon were the owners of three parcels of land located in Angeles City, Pampanga covered by Transfer Certificate of Title (TCT) Nos. T-12567, T-35788 and T-29117-R (3793). On September 26, 1979, the Spouses Dizon mortgaged these lots to herein respondent Philippine Veterans Bank (PVB) as security for a credit accommodation which they obtained from PVB. The Spouses Dizon failed to pay their obligation. As a consequence, PVB extrajudicially foreclosed the mortgage and was able to acquire the subject properties at public auction conducted on December 8, 1983. Subsequently, a Certificate of Sale was issued in favor of PVB which was registered with the Register of Deeds of Angeles City on November 22, 1984.

Sometime in June 1986, PVB filed with the Regional Trial Court (RTC) of Angeles City a Petition for the Issuance of Owner's Duplicate Certificate of Title covering the subject lots. The case was docketed as L.R.C. CAD. CASE NO. A-124-91. Apparently, for failure of PVB to prosecute the case for an unreasonable length of time, the petition was dismissed without prejudice.

On July 26, 1999, PVB filed anew with the RTC of Angeles City a Petition for Issuance of Owner's Duplicate Copy of Transfer Certificate of Title over the same parcels of land. The case was docketed as L.R.C. Case No. A-124-1024. Herein petitioner opposed the petition.

On November 16, 1999, PVB filed with the RTC of Angeles City an *ex-parte* petition for the issuance of a writ of possession. The case was docketed as Cad. Case No. A-124-1057. On February 19, 2002, the RTC rendered judgment in favor of PVB. On appeal, however, the CA reversed the decision of the RTC and dismissed PVB's petition for the issuance of a writ of possession. The CA Decision became final and executory on January 14, 2004.

Meanwhile, after due proceedings in L.R.C. Case No. A-124-1024, the RTC rendered judgment granting the petition of PVB. The dispositive portion of the RTC Decision, dated August 6, 2001, reads as follows:

WHEREFORE, the Register of Deeds of Angeles City is directed to issue another owner's duplicate copies of T.C.T. Nos. T-12567, 29117 (3793) and 35788 in favor of petitioner Philippine Veterans Bank, which shall contain a memorandum of the fact that they be issued in place of the lost ones but shall, in all respect, be entitled to like faith and credit as the original duplicates and shall thereafter be regarded as such for all purposes of Pres. Decree No. 1529, after the petitioner shall have complied with all the mandatory requirements of the law on the matter.

SO ORDERED.^[3]

Feeling aggrieved, Rogelio filed an appeal with the CA. On August 25, 2003, the CA issued the presently assailed Resolution dismissing Rogelio's appeal for his failure to file his appellant's brief.

Rogelio filed a motion for reconsideration, but the same was denied by the CA in a subsequent Resolution dated November 2, 2004.

Hence, the present petition based on the following grounds:

I. Whether or not the questioned second Petition for Issuance of Owner's Duplicate copy of Transfer Certificate of Title Nos. T-12567, 2917 (3793), 5788 in lieu of lost owner's copy filed by the Petitioner-Appellee on July 26, 1999, after more than sixteen (16) years after the Foreclosure Sale sometime in December 8, 1983 is barred by **prescription**;

II. Whether or not the three (3) defective, fictitious and/or fake Owner's duplicate certificates of title attached in the dismissed original petition filed on June 1986 when it was the Respondent Bank (petitioner therein) itself which placed the remarks on the upper right corner of the titles the phrase: **ALLEGEDLY FAKE** in our possession presented as collaterals **are similar** to the three (3) certified true copies of the original certificates of title on file at the Register of Deeds of Angeles City attached in the second Petition and marked as Annexes "A", "B" and "C" thereof respectively;

III. Whether or not Atty. Ma. Rosario A. Sabalburo, Head of Assets Recovery Department of the PVB, has committed the crime of perjury in her Sworn Affidavit of Loss that she executed on July 23, 1999, by presenting as pieces of evidence the copies of the original certificates of title secured from the Register of Deeds of Angeles City and not the machine copies of the owner's duplicate certificates of title that were found in their file as claimed or true xerox copies from RTC BR. 62;

IV. Whether or not the documentary bases (the three certified copies of

title issued by the Register of Deeds of Angeles City **only last November 16, 1999** which were duly verified by Mr. Ronnie Vergara and Mr. Herminio Manalang, the records officer and Vault Keeper, respectively of the said Office, used in the Respondent Bank's second Petition **are the very same copies of the said collaterals** having the same annotations and encumbrances making them as the true and faithful reproductions of the titles used in the Bank's first Petition filed by the Petitioner on June 19, 1986. (Emphasis supplied.)^[4]

The petition lacks merit.

With respect to the first issue, petitioner contends that the petition filed by respondent bank has prescribed, citing Article 1142 of the Civil Code which states that "[a] mortgage action prescribes in ten years."

It is true that, under Article 1142 of the Civil Code, an action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues; otherwise, it will be barred by prescription and the mortgage creditor will lose his rights under the mortgage.^[5] It is clear that the actions referred to under Article 1142 of the Civil Code are those that necessarily arise from a mortgage. In the present case, however, PVB's petition for the issuance of an owner's duplicate certificate of title already arises from its right as the owner of the subject properties and no longer as a mortgagee. The mortgage contract respondent entered into with petitioner had already been foreclosed, the properties sold and the sale in favor of PVB registered with the Register of Deeds of the Province of Cagayan. Hence, since the petition filed by PVB is not a mortgage action, the provisions of Article 1142 of the Civil Code do not apply.

In any case, Presidential Decree (PD) No. 1529, otherwise known as the Property Registration Decree, the law that specifically governs petitions for the replacement of lost duplicate certificates of title, does not provide for any limitation or period for filing the said petition. The silence of the law on this matter can only be interpreted to mean that there is no intention to provide a prescriptive period for filing this petition.

As to the second issue, petitioner anchors his opposition to the petition filed by PVB on the contention that the titles, which he presented to the bank as evidence that the subject properties were used as security for the loan he and his wife incurred with the said bank, were genuine but were later on altered by the bank's officials and employees with whom he allegedly entered a deal in order to have his loan approved. Petitioner claims that this altered and spurious titles were the ones presented by PVB in its first petition filed with the RTC in June 1986. However, these allegations remain unsubstantiated. They are self-serving statements which are not supported by any evidence whatsoever. It is settled that one who alleges a fact has the burden of proving it and mere allegation is not evidence.^[6] The established fact remains that petitioner and his wife were the ones who submitted to PVB the authentic owner's copy of the titles over the subject properties and that these copies were lost.

The Court cannot follow the logic in petitioner's arguments considering that, in the