

SECOND DIVISION

[G.R. No. 224466 (Formerly UDK-15574), March 27, 2019]

KAREN NUÑEZ* VITO, LYNETTE NUÑEZ MASINDA, WARREN NUÑEZ, AND ALDEN*** NUÑEZ, PETITIONERS, VS. NORMA MOISES-PALMA, RESPONDENT.**

DECISION

CAGUIOA, J:

This is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision^[2] dated July 31, 2015 and Resolution^[3] dated March 15, 2016 of the Court of Appeals^[4] (CA) in CA-G.R. SP. No. 07390. The CA Decision affirmed with modifications the Decision^[5] dated December 11, 2012 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz (RTC) in Civil Case No. M-12-0360-07 AP. The RTC Decision, in turn, modified the Decision^[6] dated June 8, 2012 of the Municipal Trial Court, 6th Judicial Region, Mambusao, Capiz (MTC) in Civil Case No. 515. The CA Resolution denied the motion for reconsideration filed by the petitioners.

Facts and Antecedent Proceedings

Petitioners' father, Vicentico Nuñez (Vicentico), was the original owner of Lot No. 2159-A, with an area of 429 square meters, located in Mambusao, Capiz (subject lot) as evidenced by Transfer Certificate of Title No. (TCT)T-16612.^[7]

Sometime in May 1992, Vicentico, who was then suffering from diabetes, borrowed P30,000.00 from Rosita Moises (Rosita) and as security, executed a real estate mortgage over his property (Lot No. 2159-A). Since Rosita had no money, the funds came from Norma Moises-Palma (Norma), Rosita's daughter. According to petitioners, the P30,000.00 loan of Vicentico was subsequently paid as evidenced by an Affidavit Authorizing Release of Mortgage^[8] (AARM).^[9]

Upon Vicentico's death on September 27, 1994, the subject lot was transmitted to his heirs, namely: petitioners Karen Nuñez Vito (Karen), Warren Nuñez (Warren), Lynette Nuñez Macinda (Lynette), Alden Nuñez (Alden) (collectively, petitioners) and Placida Hisole^[10] Nuñez (Placida), Vicentico's surviving spouse.^[11] Each heir had an undivided 1/5 share in the subject lot equivalent to 85.8^[12] square meters.^[13]

Placida died on August 1, 1997 and her 1/5 share was inherited equally by her heirs. Thus, petitioners each had a *pro indiviso* 1/4 share in the subject lot equivalent to 107.25 square meters.^[14]

On June 28, 1995, Norma was able to have all petitioners, except Alden, sign a Deed of Adjudication and Sale^[15] (DAS) wherein petitioners purportedly sold to Norma their respective *pro indiviso* shares in the subject lot for P50,000.00, but the DAS reflected P30,000.00 as the consideration in order to reduce the amount to be paid for capital gains tax and documentary stamp tax. After the execution of the DAS, Norma immediately took possession of the subject lot.^[16]

Instead of paying cash, Norma executed a Promissory Note^[17] (PN) on July 1, 1995 in favor of petitioners whereby she obligated herself to pay P50,000.00, which "amount represents the cost of a parcel of land [Norma] bought from them described as follows: TITLE NO. T-16612 Lot No 2159-A situated at Poblacion Tabuc Mambusao, Capiz[,] [containing an area of FOUR HUNDRED TWENTY NINE (429) SQUARE METERS, more or less"^[18] on or before July 1, 1998, without interest.^[19] Upon prodding of petitioners, Norma executed an Acknowledgment of Debt^[20] (AOD) dated February 22, 2007, whereby she admitted that she owed petitioners P50,000.00, representing the purchase price of the DAS.^[21]

Despite non-payment of the purchase price and the absence of Alden's signature on the DAS, Norma was able to cause the registration of the document with the Register of Deeds of Capiz and TCT T-35460^[22] was issued to her on August 2, 2005.^[23]

On July 10, 2006, Alden instituted a case against respondent for *Annulment of Transfer Certificate of Title No. T-35460, Declaring Deed of Adjudication and Sale Null and Void, Partition, Reconveyance and Recovery of Possession of a Portion of Land with Damages*^[24] docketed as Civil Case No. 499 before the MTC. During the pendency of this case, Alden and Norma entered into a Compromise Agreement (Compromise Agreement) on September 7, 2006, whereby Alden agreed to respect Norma's ownership and possession of 85.8 square meters of the subject lot, the share being claimed by him.^[25]

About a year later, or on August 15, 2007, petitioners Karen, Warren and Lynette, represented by their brother and attorney-in-fact Alden, filed against Norma a case for *Declaration of Nullity of Deed of Adjudication and Sale, Cancellation of Transfer Certificate of Title No. T-35460, Recovery of Ownership and/or Possession of Lot No. 2159-A and Damages*^[26] before the MTC. After trial on the merits, the MTC, on February 27, 2009 rendered a Decision in favor of petitioners. Norma filed a Notice of Appeal on April 22, 2009 which was given due course by the MTC. On October 19, 2009, the RTC rendered a Decision setting aside the MTC's Decision on the ground that Alden, who was merely acting as attorney-in-fact of Karen, Warren and Lynette, was not included as indispensable party. The RTC ordered the MTC to include Alden as an indispensable party and to conduct further proceedings on the case.^[27]

On February 19, 2010, Karen, Warren and Lynette, through Alden, and Alden, in his own capacity, filed an amended complaint before the MTC for *Declaration of Nullity of Deed of Adjudication and Sale, Cancellation of Transfer Certificate of Title No. T-35460, Recovery of Ownership and/or Possession of Lot No. 2159-A and Damages*.^[28] The allegations of the amended complaint are basically the same as those of the

original, except the addition of Alden as an indispensable party.^[29] Even up to the filing of the amended complaint, Norma was not able to pay the consideration of P50,000.00.^[30]

The MTC Ruling

After trial, the MTC rendered on June 8, 2012 a Decision^[31] in favor of petitioners, the dispositive portion of which states:

WHEREFORE, preponderance of evidence point in favor of plaintiffs and against defendant, judgment is hereby rendered:

- 1.) **DECLARING** the Deed of Adjudication and Sale dated June 28, 1995 **NULL AND VOID**;
- 2.) **ORDERING** the **CANCELLATION** of Transfer Certificate of Title No. T-35460 in the name of defendant Norma Moises Palma and the **REINSTATEMENT** of Transfer Certificate of Title No. T-16612 in the name of Vicentico Nuñez married to Placida Hisole;
- 3.) **DECLARING** plaintiffs as the rightful owners of Lot No. 2159-A subject to the right of defendant Norma Moises Palma with respect to the share of Alden Nuñez in the total area of 85.8 square meters;
- 4.) **ORDERING** defendant to turn over ownership and possession of Lot No. 2159-A to plaintiffs except the share of Alden Nuñez with an area of 85.8 square meters;
- 5.) **ORDERING** defendant Norma Moises Palma to pay plaintiffs the following:
 - a.) Fifty Thousand (Php50,000.00) pesos as attorney's fees;
 - b.) Five Thousand (Php5,000.00) pesos as litigation expenses;
 - c.) Seventy-Five Thousand (Php75,000.00) pesos as moral damages; and
 - d.) Fifteen Thousand (Php15,000.00) pesos as exemplary damages; and
- 6.) **ORDERING** defendant to pay the cost of the suit.

SO ORDERED.^[32]

Norma appealed^[33] the MTC Decision to the RTC.

The RTC Ruling

The RTC in its Decision^[34] dated December 11, 2012 granted respondent's appeal. The dispositive portion of the RTC Decision states:

WHEREFORE, premises considered, the decision of the Court a quo is hereby modified as follows:

1. Ordering the defendant-appellant to pay the plaintiffs except Alden Nuñez, the amount of P50,000.00 with legal interest rate of 12% starting on April 28, 1995 until the full amount price is paid;
2. Ordering defendant Norma Moises Palma to pay plaintiffs the following:
 - a.) Fifty Thousand (P50,000.00) pesos as attorney's fees;
 - b.) Five Thousand (P5,000.00) pesos as litigation expenses;
 - c.) Seventy Five Thousand (P75,000.00) pesos as moral damages; and
 - d.) Fifteen Thousand (P15,000.00) pesos as exemplary damages; and
3. Declaring as valid the Deed of Adjudication and Sale, dated June 28, 1995, with judicial notice on the decision based on the Compromise Agreement rendered by the Municipal Trial Court of Mambusao in Civil Case No. 499, dated September 20, 2006, involving the share of Alden Nuñez with an area of 85.8 square meters.

No pronouncement as to costs.

SO ORDERED.^[35]

Dissatisfied, petitioners filed a petition for review under Rule 42 before the CA.

The CA Ruling

The CA in its Decision^[36] dated July 31, 2015 affirmed the RTC Decision with modification. The dispositive portion of the CA Decision states:

WHEREFORE, the Decision dated December 11, 2012 of the RTC, Branch 21, Mambusao, Capiz in Civil Case No. M-12-0360-07 AP is **AFFIRMED** with the following **MODIFICATION**. The order directing respondent to pay petitioners the amount of P50,000.00 as consideration for the sale is **DELETED**. The award of attorney's fees, litigation expenses, moral damages and exemplary damages is likewise **DELETED**. No pronouncement as to costs.

SO ORDERED.^[37]

Petitioners filed a motion for reconsideration^[38] and pointed to the CA the AARM as proof of payment of Vicentico's loan. The CA denied the motion for reconsideration.^[39]

Hence, the Petition. To date, Norma has not filed her Comment despite the

Resolution^[40] dated July 11, 2016 of the Court requiring her to comment on the Petition within 10 days from receipt thereof; accordingly, she is deemed to have waived her right to do so.

Issues

The petitioners raise the following issues in the Petition:

1. whether the CA, in ruling that the transaction between petitioners and Norma is *dacion en pago*, erred in applying Article 1245 of the Civil Code; and
2. whether the CA erred in deleting the award of attorney's fees, litigation expenses, moral damages and exemplary damages.^[41]

The Court's Ruling

The general rule is that only questions of law may be raised in a Rule 45 petition for *certiorari*.^[42] There are, however, admitted exceptions. One of them is when the findings of the CA are contrary to the trial court.^[43]

Indeed, the findings of the CA and the RTC with respect to the DAS dated June 28, 1995 are divergent, requiring a review of their factual findings.

The CA ruled that the transaction between the parties is in reality a *dacion en pago*^[44] based on the following:

x x x *First*. Both parties agreed that Vicentico's pre-existing debt of P30,000.00 should be considered as the consideration for the Deed of Adjudication and Sale. Notably too, the dation in payment was not only with the creditor's consent, it was upon her proposal. *Second*. There is no showing that other creditors would be prejudiced by the agreement. *Lastly*, petitioners had not been judicially declared insolvent. Accordingly, We uphold the validity of the Deed of Adjudication and Sale.^[45]

On the other hand, the RTC ruled that the DAS "showed that the consequent sale of the lot in question was by way of constructive delivery x x x [and] the defendant-appellant took possession of the property right after the execution of the Deed of Adjudication. Clearly, there has been transfer of ownership x x x."^[46] The RTC, thus, considered the transaction of the parties as a valid contract of sale, notwithstanding the non-payment of the consideration.^[47]

The RTC in effect agreed with the MTC's finding that the DAS is a contract of sale. But, it disagreed with the MTC's ruling that it is null and void. The MTC reasoned out as follows:

By the testimonies of plaintiffs that no money or consideration was ever paid to them by defendant despite repeated demands and coupled with the presentation [by] plaintiffs of the Promissory Note (Exhibit "E") and the Acknowledgment of Debt (Exhibit "F") all of which was executed by the defendant Norma Moises Palma, the burden of proof x x x now has shifted on the shoulder of the defendant to prove that she paid the