

THIRD DIVISION

[G.R. No. 222737, November 12, 2018]

**HEIRS OF JOSEFINA GABRIEL, PETITIONERS, VS. SECUNDINA
CEBRERO, CELSO LAVIÑA, AND MANUEL C. CHUA,
RESPONDENTS.**

DECISION

PERALTA, J.:

For resolution of this Court is the petition for review on *certiorari* filed by herein petitioners Heirs of Josefina Gabriel (*petitioners*) assailing the Decision^[1] dated October 20, 2015 and the Resolution^[2] dated January 29, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102204, reversing the Decision^[3] dated September 26, 2013 of the Regional Trial Court (RTC) of Manila, Branch 52.

The facts follow.

On January 24, 1991, Segundina^[4] Cebrero (*Cebrero*), through her attorney-in-fact Remedios Muyot, executed a real estate mortgage over the subject property located in Sampaloc, Manila with an area of two thousand two hundred eighty-one square meters (2,281 sq. m.) covered by TCT No. 158305 registered under the name of Cebrero's late husband Virgilio Cebrero (*Virgilio*) as security for the payment of the amount of Eight Million Pesos (P8,000,000.00), pursuant to an amicable settlement dated January 11, 1991 entered into by the parties in the case of annulment of revocation of donation in Civil Case No. 83-21629.^[5] In the said settlement, Josefina Gabriel (*Gabriel*) recognized Cebrero's absolute ownership of the subject property and relinquished all her claims over the property in consideration of the payment of the said P8,000,000.00.^[6]

Upon Cebrero's failure to pay the amount within the period of extension until December 31, 1991, Gabriel filed in 1993 an action for foreclosure of the real estate mortgage docketed as Civil Case No. 92-62638. In a Decision^[7] dated December 15, 1993, the RTC of Manila, Branch 23 ruled in Gabriel's favor and ordered Cebrero to pay the P8,000,000.00 and interest, or the subject property shall be sold at public auction in default of payment. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff ordering the defendant as follows:

1. To pay to the Court the sum of P8,000,000.00;
2. To pay interest to the Court on the P8,000,000.00 liability beginning July 1, 1991 until fully paid pursuant to the terms agreed upon in

the amendment to the Real Estate Mortgage;

3. To pay attorneys (sic) fees equivalent to 10% (ten percent) of the total liability due under and as stipulated in the Real Estate Mortgage in Exh. G;
4. And in the alternative, in default of payment under the award appearing in paragraph 1, 2, and 3 above, after 90 days from date of service hereof, pursuant to Rule 68, Sec. 2 of the Rules of Court, the said property was covered by the Real Estate Mortgage, particularly plaintiffs (sic) undivided share or interest in the property consisting of her 1/2 conjugal share plus her inheritance consisting of 1/9 of 1/2 of the property covered by the mortgage, shall be sold at public auction to realize the mortgage, debts and costs and the sheriff is ordered to turn over to plaintiff from the proceeds of the sale, the amount of P8,000,000.00 representing the principal sum due under the mortgage plus 18% interest thereon per annum from July 1, 1991 and attorney's fees equivalent to 10% (ten percent) of the total liability of defendant plus costs of suit and expenses of litigation. The sheriff is likewise directed to deliver to the defendant the excess, if any, of the proceeds of the sale after deducting the foregoing amounts.

SO ORDERED.^[8]

The sheriff initiated the necessary proceedings for the public auction sale when no appeal was filed and the decision became final. On July 12, 1994, Gabriel, being the sole bidder, purchased Cebrero's undivided share of one-half (1/2) conjugal share, plus her inheritance consisting of one-ninth (1/9) of the subject property in the amount of P13,690,574.00.^[9] On November 16, 1995, the sheriff issued the Final Deed of Sale when Cebrero failed to redeem the property.^[10]

However, Gabriel had not registered the Final Deed of Sale since she disputed the Bureau of Internal Revenue's estate tax assessment on the subject property considering that she claimed only a portion thereof. It was also during this time that she discovered the registration of a deed of Absolute Sale^[11] dated September 27, 1994 executed by respondent Celso Laviña (Laviña), Cebrero's attorney-in-fact, purportedly conveying the entire property in favor of Progressive Trade & Services Enterprises (*Progressive*) for and in consideration of Twenty-Seven Million Pesos (P27,000,000.00).

On November 27, 1996, Eduardo Cañiza (*Cañiza*),^[12] allegedly in behalf of Gabriel, instituted a Complaint for declaration of nullity of sale and of the Transfer Certificate of Title (*TCT*) No. 225341 of the subject property registered under Progressive, a single proprietorship represented by its President and Chairman, respondent Manuel C. Chua (*Chua*).^[13]

In their Answer, respondents alleged that Gabriel has no legal capacity to sue as she was bedridden and confined at the Makati Medical Center since 1993. The complaint should be dismissed because Cañiza signed the verification and certification of the complaint without proper authority.^[14] The December 15, 1993 RTC decision in the

foreclosure proceedings was void due to improper service of summons. The Sheriffs Final Deed of Sale was not registered and recorded. Moreover, the bid price was higher than the amount in the compromise agreement. As a mere creditor, Gabriel cannot annul the sale of the subject property to Progressive, especially when there was a judicial consignment of the payment of lien.

On October 14, 1997, Gabriel died during the pendency of the case, thus her heirs substituted her.^[15]

In the September 26, 2013 Decision,^[16] the RTC ruled in favor of Gabriel. It held that Chua cannot be considered the true and lawful owner of the subject property as he was not a purchaser in good faith. At the time of sale on September 27, 1994, the mortgage pertaining to Gabriel remained annotated on the TCT No. 225340 registered in the name of Cebrero. Thus, Chua had notice of Gabriel's existing interest over a portion of the property, which should have prompted him to investigate the status of the mortgage. The dispositive portion of the Decision reads:

WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered declaring the: (1) Deed of Absolute Sale dated September 27, 1994, between Segundina M. Cebrero, represented by her attorney-in-fact Celso D. Laviña, and Progressive Trade and Services Enterprises, a single proprietorship represented by its president and chairman, Manuel C. Chua; and (2) Transfer Certificate of Title No. 225341 registered in the name of Progressive Trade and Services Enterprises, as null and void and of no legal effect. Accordingly, the Registry of Deeds of Manila is hereby directed to cancel TCT No. 225341 and re-issue TCT No. 225340 in the name of Secundina M. Cebrero.

Defendants are ordered to pay cost of suit. On the other hand, plaintiffs' prayer for the award of attorney's fees is denied.

SO ORDERED.^[17]

On appeal, the CA reversed and set aside the Decision of the RTC. There was no Special Power of Attorney (SPA) attached to the complaint to substantiate Cañiza's authority to sign the complaint and its verification and certification of non-forum shopping. As the awardee of the foreclosure proceedings, Gabriel is the real party-in-interest in the case. Since the trial court never acquired jurisdiction over the complaint, all proceedings subsequent thereto are considered null and void, and can never attain finality. The *fallo* of the Decision provides:

WHEREFORE, in view of the foregoing, this Court resolves as follows:

(1) Plaintiffs-appellants' *Motion for Reconsideration* is **DENIED**.

(2) Defendant-appellant's Appeal is **GRANTED**. The Decision, dated September 26, 2013, rendered by the Regional Trial Court of Manila, Branch 52 in Civil Case No. 97-81420 is **REVERSED AND SET ASIDE** as to the validity of the sale and TCT No. 225341. The same are declared to be VALID. The Complaint, dated November 27, 1996, is **DISMISSED**.

(3) Plaintiffs-appellants' Appeal with regard to attorney's fees is **DENIED**.

SO ORDERED.^[18]

Upon denial of their Motion for Reconsideration, petitioners are now before this Court raising the sole issue:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW, WHEN IT REVERSED AND SET ASIDE THE DECISION, DATED SEPTEMBER 26, 2013, RENDERED BY THE REGIONAL TRIAL COURT OF MANILA, BRANCH 52 IN CIVIL CASE NO. 97-81420 AS TO THE VALIDITY OF THE SALE OF TCT NO. 225341 AND DISMISSED THE COMPLAINT DATED NOVEMBER 27, 1996 ON THE SOLE BASIS OF MERE TECHNICALITY THAT THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING WAS NOT SUPPORTED WITH THE SPECIAL POWER OF ATTORNEY OF EDUARDO CAÑIZA.^[19]

The instant petition is without merit.

Petitioners allege that the Order^[20] dated June 13, 2007 of the RTC denying Laviña's motion to set a preliminary hearing on the affirmative defenses has long attained finality since respondents did not appeal the same. Respondents are now estopped from raising the issue on appeal.

Section 1, Rule 41 of the Rules of Court provides:

Section 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;**
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (f) An order of execution;
- (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.^[21]

A final judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying a motion to dismiss under Rule 16 of the Rules. Unlike a "final" judgment or order, which is appealable, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.^[22]

The RTC Order dated June 13, 2007 denying the motion to set hearing on special and affirmative defenses is no doubt interlocutory for it did not finally dispose of the case but will proceed with the pre-trial. As such, the said Order is not appealable, but may be questioned as part of an appeal that may eventually be taken from the final judgment rendered. Here, respondents had consistently raised in their Answer and in the appeal before the CA the issue of Cañiza's authority to file the case on behalf of Gabriel.

Petitioners allege that the verification and certification of the complaint conforms with the rules since Cañiza, as Gabriel's attorney-in fact, signed it. Besides, any defect was cured when he, being one of the heirs, substituted Gabriel when she died during the pendency of the case before the trial court.

Every action must be presented in the name of the real party-in-interest. Section 2, Rule 3 of the 1997 Rules of Court provides:

Sec. 2. *Parties in interest.* - A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless, otherwise, authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party-in-interest.

Here, Gabriel emerged as the highest bidder when a portion of the subject property was sold on a public auction sale on July 12, 1994 after she foreclosed the real estate mortgage over the said property. As the one claiming ownership of the said property, she is the real party-in-interest in the instant case.

As to the verification and certification of non-forum shopping, the Court, in *Altres, et al. v. Empleo, et al.*,^[23] laid down the following guidelines:

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective