

THIRD DIVISION

[G.R. No. 189881, April 19, 2017]

**BACLARAN MARKETING CORPORATION, PETITIONER, VS.
FERNANDO C. NIEVA AND MAMERTO SIBULO, JR.,
RESPONDENTS.**

D E C I S I O N

JARDELEZA, J.:

This is a Petition for Review on *Certiorari* ^[1] of the August 26, 2009^[2] and October 9, 2009^[3] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 108033. The CA denied due course and dismissed Baclaran Marketing Corporation's (BMC) Petition for Annulment of Judgment on the ground that it is not a remedy available to BMC.

Petitioner BMC is a domestic corporation engaged in the business of distribution, marketing and delivery of cement.^[4] It is one of the defendants in Civil Case No. 1218-A, entitled "*Mamerto Sibulo, Jr. v. Ricardo Mendoza and Baclaran Marketing, Inc.*" pending with the Regional Trial Court of Antipolo, Branch 74 (Antipolo Court).^[5] The case is one for damages arising from a vehicular collision in Taytay, Rizal between a 10-wheeler truck owned by BMC and driven by its employee Ricardo Mendoza (Mendoza), and a car owned and driven by Mamerto Sibulo, Jr. (Sibulo). The Antipolo Court, in its Decision^[6] dated November 21, 1990 (1990 Decision), ruled in favor of BMC and Mendoza and dismissed Sibulo's complaint.^[7] It found that the damages suffered by Sibulo were the result of his own reckless and imprudent driving.^[8]

On appeal, the CA, in its Decision^[9] dated May 9, 2005 reversed the Antipolo Court and held that Mendoza's negligence caused the collision. It awarded Sibulo damages in the total amount of P765,159.55.^[10] In the absence of a motion for reconsideration, the Decision became final and executory on June 12, 2005.^[11] The Antipolo Court subsequently issued a Writ of Execution^[12] on January 16, 2006. Then, in an Order^[13] dated February 23, 2006, it directed the Deputy Sheriff, upon motion of Sibulo, to implement the Writ of Execution against the real properties owned by BMC, as it appears that BMC has no personal properties. The sheriff of the Antipolo Court levied upon BMC's real property in Parañaque City covered by Transfer Certificate of Title (TCT) No. 34587 (property). He sold the property and its improvements through public auction on April 17, 2006. Respondent Fernando C. Nieva (Nieva) emerged as the highest bidder paying the total price of P800,000.00.^[14]

For BMC's failure to redeem the property within one year from the sale, Nieva consolidated ownership over it. He filed a Petition for Cancellation of Transfer

Certificate Title No. 34587 and Issuance of New [Title] in the Regional Trial Court of Parañaque City, Branch 257 (Parañaque Court) pursuant to Section 107 of Presidential Decree No. 1529.^[15] The case was docketed as LRC Case No. 07-0119.^[16] The Parañaque Court granted the petition in its Decision^[17] dated March 26, 2008 and ordered BMC to surrender to Nieva, within 15 days from receipt of the Decision, its owner's duplicate certificate of title over the property. Failing such, the Parañaque Court ordered the Register of Deeds to annul TCT No. 34587 and issue a new title in Nieva's name. The Decision of the Parañaque Court became final on May 8, 2008.^[18]

Consequently, Nieva filed a Petition for Issuance of a Writ of Possession over the property in the Parañaque Court. The case was docketed as LRC Case No. 08-0077. The Parañaque Court granted the petition in its Decision^[19] dated January 26, 2009 and issued a Writ of Possession and Notice to Vacate against BMC dated March 12, 2009 and March 22, 2009, respectively.^[20]

In view of the Writ of Possession and Notice to Vacate issued against it, BMC filed a Petition for Annulment of Judgment^[21] before the CA. BMC prayed for the annulment of the following orders and decisions:

- (a) Writ of Execution dated January 16, 2006 issued by the Antipolo Court in Civil Case No. 1218-A;
- (b) Order dated February 23, 2006 of the Antipolo Court in Civil Case No. 1218-A ordering the implementation of the writ of execution over the real properties of BMC;
- (c) Auction Sale dated April 17, 2006;
- (d) Decision dated March 26, 2008 of the Parañaque Court in LRC Case No. 07-0119 canceling TCT No. 34587; and
- (e) Decision dated January 26, 2009 of the Parañaque Court in LRC Case No. 08-0077, ordering the issuance of a Writ of Possession.^[22]

BMC alleged that its counsel, Atty. Isagani B. Rizon (Atty. Rizon), committed acts of gross and inexcusable negligence constituting "extrinsic fraud," which deprived it of due process and an opportunity to present its side.^[23] It discovered the fraud only in December 2008 when its representatives tried to pay the real estate tax on the property, only to learn that the title to it had already been transferred to Nieva.^[24] BMC averred that it did not know that Sibulo appealed the 1990 Decision of the Antipolo Court to the CA. It claimed that Atty. Rizon assured BMC that the 1990 Decision ended the controversy.^[25] Had BMC known of the appeal, it could have opposed the proceedings or engaged the services of new counsel.

BMC claimed that it immediately called Atty. Rizon in his office upon discovering that the property was levied upon and sold at public auction. However, BMC was informed that Atty. Rizon died on January 30, 2009. It also learned that Atty. Rizon ran for public office and won as Mayor of Baroy, Lanao Del Norte in the 1995, 2001, 2004 and 2007 elections.^[26] BMC alleged that based on court records, notices relative to the case against BMC were sent to Atty. Rizon but, for some reason unknown to BMC, Atty. Rizon never informed it of the court documents/processes.^[27]

BMC emphasized that the Antipolo Court ruled in its favor in Civil Case No. 1218-A and that it was only when BMC failed to participate in the appeal that an adverse decision was rendered against it.^[28] It maintains that if the orders of the Antipolo and Parañaque Courts were allowed to stand, BMC will be deprived of its substantial property rights over the property: when the property was sold to Nieva at the public auction for a bid price of P800,000.00, its market value^[29] was already P19,890,000.00.^[30]

The CA, in its Resolution dated August 26, 2009, denied BMC's petition. It ruled that the remedy of annulment of judgment is not available to BMC because:

- (a) Extrinsic fraud refers to a fraud perpetrated by the prevailing party, not by the unsuccessful party's own counsel.^[31]
- (b) BMC is bound by the negligence of Atty. Rizon because it was negligent for not checking on the status of the case. It did not also inform the Antipolo Court of its change of address. Thus, BMC cannot claim that it was denied due process.^[32]
- (c) A writ of execution or auction sale are not in the nature of a final judgment, order, or resolution, hence, they cannot be the subject of an action to annul judgment.^[33]

BMC moved for reconsideration; this, however, was denied. Hence, this petition,^[34] which raises the sole issue of whether the CA erred in dismissing BMC's petition for annulment of judgment.

We deny the petition.

I

Rule 47 of the Rules of Court governs actions for the annulment of final judgments, orders, or resolutions of regional trial courts in civil actions. It is a recourse equitable in character, allowed only in exceptional cases where there is no available or other adequate remedy.^[35] Its objective is to set aside a final and executory judgment, which is not void upon its face, but is entirely regular in form, and whose alleged defect is not apparent upon its face or from the recitals contained in the judgment.^[36] Since it disregards the time-honored rule of immutability and unalterability of final judgments, the Rules of Court impose stringent requirements before a litigant may avail of it. In *Pinausukan Seafood House v. Far East Bank & Trust Company*,^[37] we held that "[g]iven the extraordinary nature and the objective of the remedy of annulment of judgment or final order,"^[38] a petitioner must comply with the statutory requirements as set forth under Rule 47. These are:

- (1) The remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner;
- (2) The grounds for the action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction;
- (3) The action must be filed within four years from the discovery of the

- extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel; and
- (4) The petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.^[39]

BMC's petition for annulment of judgment fails to meet the first and second requisites.

II

Rule 47, Section 1 limits the applicability of the remedy of annulment of judgment to *final* judgments, orders or resolutions.^[40] A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto. This may be 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 of *res judicata* or prescription.^[41] In contrast, an interlocutory order does not dispose of a case completely but leaves something to be done upon its merits.^[42]

We find that the CA correctly denied BMC's petition.

In *Guiang v. Co*,^[43] we declared that an auction sale and a writ of execution are not final orders. Thus, they cannot be nullified through an action for annulment of judgment, to wit:

It bears stressing that Rule 47 of the Rules of Civil Procedure applies only to a petition to annul a judgment or final order and resolution in civil actions, on the ground of extrinsic fraud or lack of jurisdiction or due process. A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. **The rule does not apply to an action to annul the levy and sale at public auction of petitioner's properties or the certificate of sale executed by the deputy sheriff over said properties. Neither does it apply to an action to nullify a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.**^[44] (Citations omitted, emphasis supplied.)

Corollarily, an order *implementing* a writ of execution issued over certain real properties is also not a final order as it merely enforces a judicial process over an

identified object. It does not involve an adjudication on the merits or determination of the rights of the parties.

Closely related to a writ of execution is a writ of possession. In *LZK Holdings and Development Corp. v. Planters Development Bank*,^[45] we explained that a writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.^[46] Thus, similar to a writ of execution, a writ of possession is not a final order which may be annulled under Rule 47. It is merely a judicial process to enforce a final order against the losing party. For this reason the Decision of the Antipolo Court ordering the issuance of writ of possession is also not amenable to an action for annulment of judgment.

In fine, only the Decision of the Parañaque Court ordering the cancellation of BMC's title over the property qualifies as a final judgment. It is a judgment on the merits declaring who between Nieva and BMC has the right over the title to the property. Therefore, it may be the subject of an action for annulment of judgment. Be that as it may, BMC failed to prove that any of the grounds for annulment are present in this case.

III

Rule 47, Section 2 provides extrinsic fraud and lack of jurisdiction as the exclusive grounds for the remedy of annulment of judgment.^[47] Case law, however, recognizes a third ground—denial of due process of law. *Arcelona v. Court of Appeals*^[48] teaches that a decision which is patently void may be set aside on grounds of want of jurisdiction or "non-compliance with due process of law."^[49]

Here, BMC invokes extrinsic fraud and lack of due process as grounds for its petition for annulment of judgment. It claims that Atty. Rizon's gross negligence in handling the case constitutes extrinsic fraud and deprived it of due process of law.

We are not persuaded. Extrinsic fraud refers to a fraud committed to the unsuccessful party by his opponent preventing him from fully exhibiting his case by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or when an attorney fraudulently or without authority connives at his defeat.^[50]

In *Pinausukan*,^[51] we held that a lawyer's neglect in keeping track of the case and his failure to apprise his client of the developments of the case do not constitute extrinsic fraud. Fraud is not extrinsic if the alleged fraudulent act was committed by petitioner's own counsel. The fraud must emanate from the act of the adverse party and must be of such nature as to deprive petitioner of its day in court.^[52] Thus, in many cases, we have held that a lawyer's mistake or gross negligence does not amount to extrinsic fraud that would grant a petition for annulment of judgment.^[53]

In this case, the CA correctly found that BMC neither alleged nor proved that the gross negligence of its former counsel was done in connivance with Nieva or Sibulo.