

THIRD DIVISION

[G.R. No. 187021, January 25, 2012]

**DOUGLAS F. ANAMA, PETITIONER, VS. COURT OF APPEALS,
PHILIPPINE SAVINGS BANK, SPOUSES SATURNINA BARIA
& TOMAS CO AND THE REGISTER OF DEEDS, METRO MANILA,
DISTRICT II, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for review under Rule 45 assailing the March 31, 2008 Decision^[1] of the Court of Appeals (CA) and its February 27, 2009 Resolution,^[2] in CA G.R. No. SP-94771, which affirmed the November 25, 2005 Order of the Regional Trial Court, Branch 167, Pasig City (RTC), granting the motion for issuance of a writ of execution of respondents.

The Facts

The factual and procedural backgrounds of this case were succinctly recited by the CA in its decision as follows:

Sometime in 1973, the Petitioner, Douglas F. Anama (Anama), and the Respondent, Philippine Savings Bank (PSB), entered into a "Contract to Buy," on installment basis, the real property owned and covered by Transfer Certificate of Title (TCT) No. 301276 in the latter's name. However, Anama defaulted in paying his obligations thereunder, thus, PSB rescinded the said contract and title to the property remained with the latter. Subsequently, the property was sold by PSB to the Spouses Saturnina Baria and Tomas Co (Co Spouses) who, after paying the purchase price in full, caused the registration of the same in their names and were, thus, issued TCT No. 14239.

Resultantly, Anama filed before the Respondent Court a complaint for declaration of nullity of the deed of sale, cancellation of transfer certificate of title, and specific performance with damages against PSB, the Co Spouses, and the Register of Deeds of Metro Manila, District II.

On August 21, 1991 and after trial on the merits, the Respondent Court dismissed Anama's complaint and upheld the validity of the sale between PSB and the Co Spouses. Undaunted, Anama appealed, at first, to this Court, and after failing to obtain a favorable decision, to the Supreme Court.

On January 29, 2004, the Supreme Court rendered judgment denying

Anama's petition and sustaining the validity of the sale between PSB and the Co Spouses. Its decision became final and executory on July 12, 2004. Pursuant thereto, the Co Spouses moved for execution, which was granted by the Respondent Court per its Order, dated November 25, 2005.

Aggrieved, Anama twice moved for the reconsideration of the Respondent Court's November 25, 2005 Order arguing that the Co Spouses' motion for execution is fatally defective. He averred that the Spouses' motion was *pro forma* because it lacked the required affidavit of service and has a defective notice of hearing, hence, a mere scrap of paper. The Respondent Court, however, denied Anama's motion(s) for reconsideration.

Dissatisfied, the petitioner questioned the RTC Order before the CA for taking judicial cognizance of the motion for execution filed by spouses Tomas Co and Saturnina Baria (*Spouses Co*) which was (1) not in accord with Section 4 and Section 15 of the Rules of Court because it was without a notice of hearing addressed to the parties; and (2) not in accord with Section 6, Rule 15 in conjunction with Section 13, Rule 13 of the Rules of Court because it lacks the mandatory affidavit of service.

On March 31, 2008, the CA rendered a decision dismissing the petition. It reasoned out, among others, that the issue on the validity of the deed of sale between respondents, Philippine Savings Bank (*PSB*) and the Spouses Co, had long been laid to rest considering that the January 29, 2004 Decision of this Court became final and executory on July 12, 2004. Hence, execution was already a matter of right on the part of the respondents and the RTC had the ministerial duty to issue a writ of execution enforcing a final and executory decision.

The CA also stated that although a notice of hearing and affidavit of service in a motion are mandatory requirements, the Spouses Co's motion for execution of a final and executory judgment could be acted upon by the RTC *ex parte*, and therefore, excused from the mandatory requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court.

The CA was of the view that petitioner was not denied due process because he was properly notified of the motion for execution of the Spouses Co. It stated that the act of the Spouses Co in resorting to personal delivery in serving their motion for execution did not render the motion *pro forma*. It refused to apply a rigid application of the rules because it would result in a manifest failure of justice considering that petitioner's position was nothing but an obvious dilatory tactic designed to prevent the final disposition of Civil Case No. 44940.

Not satisfied with the CA's unfavorable disposition, petitioner filed this petition praying for the reversal thereof presenting the following

ARGUMENTS:

THE RESPONDENT APPELLATE COURT DID NOT TAKE INTO

CONSIDERATION THE CLEAR TEACHING OF THE HONORABLE COURT WITH REGARD TO THE REQUISITE NOTICE OF HEARING - IT SHOULD BE ADDRESSED TO THE PARTIES NOT TO THE CLERK OF COURT, THE LATEST (THEN) BEING GARCIA V. SANDIGANBAYAN, G.R. NO. 167103, AUGUST 31, 2006, 500 SCRA 361; DE JESUS V. JUDGE DILAG, A.M. NO. RTJ-05-1921, SEPTEMBER 30, 2005, 471 SCRA 176; LAND BANK OF THE PHILIPPINES V. NATIVIDAD, G.R. NO. 127198, MAY 16, 2005, 458 SCRA 441; ATTY. JULIUS NERI V. JUDGE JESUS S. DE LA PEÑA, A.M. NO. RTJ-05-1896, APRIL 29, 2005, 457 SCRA 538; AND ALVAREZ V. DIAZ, A.M. NO. MTJ-00-1283, MARCH 3, 2004, 424 SCRA 213;

THE RESPONDENT APPELLATE COURT DID NOT TAKE INTO CONSIDERATION THE CLEAR TEACHING OF THE HONORABLE COURT WITH REGARD TO THE REQUISITE AFFIDAVIT OF SERVICE - IT SHOULD BE IN THE PROPER FORM AS PRESCRIBED IN THE RULES AND IT SHOULD BE ATTACHED TO THE MOTION, THE LATEST (THEN) BEING ELLO V. COURT OF APPEALS, G.R. NO. 141255, JUNE 21, 2005, 460 SCRA 406; LOPEZ DELA ROSA DEVELOPMENT CORPORATION V. COURT OF APPEALS, G.R. NO. 148470, APRIL 29, 2005, 457 SCRA 614; ALVAREZ V. DIAZ, A.M. NO. MTJ-00-1283, MARCH 3, 2004, 424 SCRA 213; EL REYNO HOMES, INC. V. ERNESTO ONG, 397 SCRA 563; CRUZ V. COURT OF APPEALS, 388 SCRA 72, 80-81; AND MERIS V. OFILADA, 293 SCRA 606;

THE RESPONDENT APPELLATE COURT DID NOT TAKE APPROPRIATE ACTION ON THE "FRAUD PERPETRATED UPON THE COURT" BY RESPONDENT-SPOUSES AND THEIR LEAD COUNSEL.

SINCE THE RESPONDENT APPELLATE COURT REFUSED TO TAKE INTO CONSIDERATION THE RESPONDENT BANK'S ACTION - THAT OF:

ENGAGING IN A DAGDAG-BAWAS (LEGALLY "INTERCALATION") OPERATION OF A PORTION OF THE TRANSCRIPT OF STENOGRAPHIC NOTES (TSN), OCTOBER 12, 1984, OF THE REGIONAL TRIAL COURT, BRANCH 167, PASIG CITY, IN CIVIL CASE NO. 44940, PAGES 54-55, AND

PRESENTING IT IN ITS APPELLEE'S BRIEF (IN THE OWNERSHIP CASE, CA-G.R. NO. CV-42663, LIKEWISE, BEFORE THE RESPONDENT APPELLATE COURT) BY CITING IT ON PAGE 14 OF SAID BRIEF, AS IMPLIEDLY COMING FROM THE TSN OF THE TRIAL COURT.

THINKING THAT THEIR FALSIFIED APPELLEE'S BRIEF WAS MATERIAL IN SAID CA-G.R. NO. CV-42663.

IT COULD NOT RULE THAT THE SAME HAS BROUGHT ABOUT A CRUCIAL MATERIAL CHANGE IN THE SITUATION OF THE PARTIES WHICH MAKES EXECUTION INEQUITABLE (PUNCIA V. GERONA, 252 SCRA 424, 430-431), OR, IN THE WORDS OF DEVELOPMENT BANK OF RIZAL V. CA, G.R. NO. 75964, DECEMBER 1, 1987, 156 SCRA 84, 90, "THERE EXISTS A COMPELLING REASON FOR STAYING THE EXECUTION OF JUDGMENT."

Basically, petitioner argues that the respondents failed to substantially comply with the rule on notice and hearing when they filed their motion for the issuance of a writ of execution with the RTC. He claims that the notice of hearing in the motion for execution filed by the Spouses Co was a mere scrap of paper because it was addressed to the Clerk of Court and not to the parties. Thus, the motion for execution did not contain the required proof of service to the adverse party. He adds that the Spouses Co and their counsel deliberately "misserved" the copy of their motion for execution, thus, committing fraud upon the trial court.

Additionally, he claims that PSB falsified its appellee's brief by engaging in a "dagdag-bawas" ("intercalation") operation in pages 54 to 55 of the TSN, dated October 12, 1984.

Position of the Spouses Co

The Spouses Co counter that the petition should be dismissed outright for raising both questions of facts and law in violation of Section 1, Rule 45 of the Rules of Court. The Spouses Co aver that petitioner attempts to resurrect the issue that PSB cheated him in their transaction and that the RTC committed a "dagdag-bawas." According to the Spouses Co, these issues had long been threshed out by this Court.

At any rate, they assert that they have substantially complied with the requirements of notice and hearing provided under Sections 4 and 5 of Rule 15 and Section 13, Rule 13 of the Rules of Court. Contrary to petitioner's allegations, a copy of the motion for the issuance of a writ of execution was given to petitioner through his principal counsel, the Quasha Law Offices. At that time, the said law office had not formally withdrawn its appearance as counsel for petitioner. Spouses Co argue that what they sought to be executed was the final judgment of the RTC duly affirmed by the CA and this Court, thus, putting the issues on the merits to rest. The issuance of a writ of execution then becomes a matter of right and the court's duty to issue the writ becomes ministerial.

Position of respondent PSB

PSB argues that the decision rendered by the RTC in Civil Case No. 44940 entitled "*Douglas F. Anama v. Philippine Savings Bank, et. al.*"^[3] had long become final and executory as shown by the Entry of Judgment made by the Court on July 12, 2004. The finality of the said decision entitles the respondents, by law, to the issuance of a writ of execution. PSB laments that petitioner relies more on technicalities to frustrate the ends of justice and to delay the enforcement of a final and executory decision.

As to the principal issue, PSB points out that the notice of hearing appended to the motion for execution filed by the Spouses Co substantially complied with the requirements of the Rules since petitioner's then counsel of record was duly notified and furnished a copy of the questioned motion for execution. Also, the motion for execution filed by the Spouses Co was served upon and personally received by said counsel.

The Court's Ruling

The Court agrees with the Spouses Co that petitioner's allegations on the "dagdag-bawas operation of the Transcript of Stenographic Notes," the "fraud perpetuated upon the Court by said spouses and their lead counsel," the "ownership," and "falsification" had long been laid to rest in the case of *"Douglas F. Anama v. Philippine Savings Bank, et. al."*^[4] For said reason, the Court cannot review those final pronouncements. To do so would violate the rules as it would open a final judgment to another reconsideration which is a prohibited procedure.

On the subject procedural question, the Court finds no compelling reason to stay the execution of the judgment because the Spouses Co complied with the notice and hearing requirements under Sections 4, 5 and 6 of Rule 15. Said sections, as amended, provide:

SECTION 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SECTION 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SECTION 6. Proof of service necessary. - No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Pertinently, Section 13 of Rule 13 of the 1997 Rules of Civil Procedure, as amended, provides:

SEC. 13. *Proof of service.* - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place, and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry