654 Phil. 117

SECOND DIVISION

[G.R. No. 181930, January 10, 2011]

MILAGROS SALTING, PETITIONER, VS. JOHN VELEZ AND CLARISSA R. VELEZ, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the Court of Appeals (CA) Decision [1] dated November 29, 2007 and Resolution [2] dated February 27, 2008 in CA-G.R. SP No. 97618.

The factual and procedural antecedents leading to the instant petition are as follows:

On October 7, 2003, respondents John Velez and Clarissa Velez filed a complaint [3] for ejectment against petitioner Milagros Salting involving a property covered by Transfer Certificate of Title (TCT) No. 38079. The case was docketed as Civil Case No. 2524. On March 28, 2006, respondents obtained a favorable decision [4] when the Metropolitan Trial Court (MeTC), Branch LXXIV, of Taguig City, Metro Manila, ordered petitioner to vacate the subject parcel of land and to pay attorney's fees and costs of suit. The decision became final and executory, after which respondents filed a motion for execution which was opposed by petitioner.

Thereafter, petitioner instituted an action before the Regional Trial Court (RTC), Branch 153, for Annulment of Sale of the Property covered by TCT No. 38079, with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction against respondents, Hon. Ma. Paz Yson, Deputy Sheriff Ernesto G. Raymundo, Jr., Teresita Diokno-Villamena, and Heirs of Daniel B. Villamena (Heirs of Villamena). [5] The case was docketed as Civil Case No. 70859-TG. Petitioner claimed that she purchased the subject parcel of land from Villamena as evidenced by a notarized document known as Sale of Real Estate. She further explained that respondents were able to obtain title to the subject property through the fraudulent acts of the heirs of Villamena. Finally, she averred that the decision in Civil Case No. 2524 had not attained finality as she was not properly informed of the MeTC decision. Petitioner thus prayed that a TRO be issued, restraining respondents and all persons acting for and in their behalf from executing the MeTC decision dated March 28, 2006. She further sought the declaration of nullity of the sale by the heirs of Villamena to respondents involving the subject parcel of land, and, consequently, the cancellation of the title to the property in the name of respondents.

Finding that petitioner would suffer grave and irreparable damage if respondents would not be enjoined from executing the March 28, 2006 MeTC decision while

respondents would not suffer any prejudice, the RTC, in an Order dated October 26, 2006, granted the writ of preliminary injunction applied for. [6] Aggrieved, respondents filed a special civil action for *certiorari* under Rule 65 of the Rules of Court before the CA, raising the sole issue of whether or not the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the writ of preliminary injunction against the execution of a judgment for ejectment.

In a Decision [7] dated November 29, 2007, the CA resolved the issue in the affirmative. The CA noted that the principal action in Civil Case No. 70859-TG is the annulment of the deed of sale executed between respondents and the heirs of Villamena, while the subject of the ancillary remedy of preliminary injunction is the execution of the final judgment in a separate proceeding for ejectment in Civil Case No. 2524. The appellate court concluded that petitioner had no clear and unmistakable right to possession over the subject parcel of land in view of the March 28, 2006 MeTC decision. Hence, contrary to the conclusion of the RTC, the CA opined that petitioner was not entitled to the writ of preliminary injunction. The CA thus set aside the October 26, 2006 Order of the RTC.

Petitioner now comes before this Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court, claiming that:

> In rendering the assailed Decision and Resolution, the Court of Appeals has decided in a way probably not in accord with law or with the applicable decisions of the Supreme Court. (Section 6 (a), Rule 45, 1997 Rule[s] of Civil Procedure). The Court of Appeals disregarded the rule that service of decision to a deceased lawyer is invalid and that the party must be duly served by the final judgment in order that the final judgment will become final and executory. The Court of Appeals, likewise, disregarded the existence of a clear and existing right of the petitioner which should be protected by an injunctive relief and the rule that the pendency of an action assailing the right of a party to eject will justify the suspension of the proceedings of the ejectment case. [8]

Petitioner claims that she was denied her right to appeal when the March 28, 2006 MeTC decision was declared final and executory despite the fact that the copy of the decision was served on her deceased counsel. She further claims that the MeTC decision had not attained finality due to improper service of the decision. Moreover, petitioner avers that she has a clear and existing right and interest over the subject property which should be protected by injunction. Finally, petitioner argues that jurisprudence allows the suspension of proceedings in an ejectment case at whatever stage when warranted by the circumstances of the case.

In their Comment, [9] respondents allege that the petition is already moot and academic in view of the execution of the MeTC decision. They claim that it is not proper to restrain the execution of the MeTC decision as the case instituted before the RTC was for the annulment of the sale executed between respondents and the heirs of Villamena, and not an action for annulment of judgment or mandamus to compel the MeTC to entertain her belated appeal. Respondents add that the finality of the ejectment case is not a bar to the case instituted for the annulment of the sale and the eventual recovery of ownership of the subject property. The actions for

ejectment and for annulment of sale are two different cases that may proceed independently, especially when the judgment in the ejectment case had attained finality, as in the instant case. Finally, respondents fault the petitioner herself for not informing the MeTC of the death of her former counsel the moment she learned of such death.

We find no merit in the petition.

We first determine the validity of the service of the March 28, 2006 MeTC decision on petitioner's counsel who, as of that date, was already deceased. If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. [10] Thus, when the MeTC decision was sent to petitioner's counsel, such service of judgment was valid and binding upon petitioner, notwithstanding the death of her counsel. It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership continues to exist lawfully, the partners are still alive, or its associates are still connected with the firm. [11] Litigants, represented by counsel, cannot simply sit back, relax, and await the outcome of their case. [12] It is the duty of the party-litigant to be in contact with her counsel from time to time in order to be informed of the progress of her case. [13] It is likewise the duty of the party to inform the court of the fact of her counsel's death. Her failure to do so means that she is negligent in the protection of her cause, and she cannot pass the blame to the court which is not tasked to monitor the changes in the circumstances of the parties and their counsels.

It is noteworthy that when petitioner came to know of the death of her counsel and upon obtaining the services of a new counsel, petitioner instituted another action for the annulment of the deed of sale between her and the heirs of Villamena, instead of questioning the MeTC decision through an action for annulment of judgment. Obviously, the annulment case instituted by petitioner is separate and distinct from the ejectment case filed by respondents. She cannot, therefore, obtain relief through the second case for alleged errors and injustices committed in the first case.

With the foregoing disquisition, we find that the March 28, 2006 MeTC decision had, indeed, become final and executory. A final and executory decision can only be annulled by a petition to annul the same on the ground of extrinsic fraud and lack of jurisdiction, or by a petition for relief from a final order or judgment under Rule 38 of the Rules of Court. However, no petition to that effect was filed. [14] Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered, or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it. [15]

In the present case, the finality of the March 28, 2006 decision with respect to possession *de facto* cannot be affected by the pendency of the annulment case where the ownership of the property is being contested. [16] We are inclined to adhere to settled jurisprudence that suits involving ownership may not be successfully pleaded in abatement of the enforcement of the final decision in an