

THIRD DIVISION

[G.R. No. 177703, January 28, 2008]

**VILMA G. ARRIOLA and ANTHONY RONALD G. ARRIOLA,
Petitioners, vs. JOHN NABOR C. ARRIOLA, Respondent.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the November 30, 2006 Decision^[1] and April 30, 2007 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 93570.

The relevant facts are culled from the records.

John Nabor C. Arriola (respondent) filed Special Civil Action No. 03-0010 with the Regional Trial Court, Branch 254, Las Piñas City (RTC) against Vilma G. Arriola and Anthony Ronald G. Arriola (petitioners) for judicial partition of the properties of decedent Fidel Arriola (the decedent Fidel). Respondent is the son of decedent Fidel with his first wife Victoria C. Calabia, while petitioner Anthony is the son of decedent Fidel with his second wife, petitioner Vilma.

On February 16, 2004, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the partition of the parcel of land covered by Transfer Certificate of Title No. 383714 (84191) left by the decedent Fidel S. Arriola by and among his heirs John Nabor C. Arriola, Vilma G. Arriola and Anthony Ronald G. Arriola in equal shares of one-third (1/3) each without prejudice to the rights of creditors or mortgagees thereon, if any;
2. Attorney's fees in the amount of TEN THOUSAND (P10,000.00) PESOS is hereby awarded to be reimbursed by the defendants to the plaintiff;
3. Costs against the defendants.

SO ORDERED.^[3]

The decision became final on March 15, 2004.^[4]

As the parties failed to agree on how to partition among them the land covered by TCT No. 383714 (subject land), respondent sought its sale through public auction, and petitioners acceded to it.^[5] Accordingly, the RTC ordered the public auction of

the subject land.^[6] The public auction sale was scheduled on May 31, 2003 but it had to be reset when petitioners refused to include in the auction the house (subject house) standing on the subject land.^[7] This prompted respondent to file with the RTC an Urgent Manifestation and Motion for Contempt of Court,^[8] praying that petitioners be declared in contempt.

The RTC denied the motion in an Order^[9] dated August 30, 2005, for the reason that petitioners were justified in refusing to have the subject house included in the auction, thus:

The defendants [petitioners] are correct in holding that the house or improvement erected on the property should not be included in the auction sale.

A cursory reading of the aforementioned Decision and of the evidence adduced during the ex-parte hearing clearly show that nothing was mentioned about the house existing on the land subject matter of the case. In fact, even plaintiff's [respondent's] initiatory Complaint likewise did not mention anything about the house. Undoubtedly therefore, the Court did not include the house in its adjudication of the subject land because it was plaintiff himself who failed to allege the same. It is a well-settled rule that the court can not give a relief to that which is not alleged and prayed for in the complaint.

To hold, as plaintiff argued, that the house is considered accessory to the land on which it is built is in effect to add to plaintiff's [a] right which has never been considered or passed upon during the trial on the merits.

In the absence of any other declaration, obvious or otherwise, only the land should be partitioned in accordance to [sic] the aforementioned Decision as the house can not be said to have been necessarily adjudicated therein. Thus, plaintiff can not be declared as a co-owner of the same house without evidence thereof and due hearing thereon.

The Decision of the Court having attained its finality, as correctly pointed out, judgment must stand even at the risk that it might be erroneous.

WHEREFORE, the *Urgent Manifestation and Motion for Contempt of Court* filed by plaintiff is hereby DENIED for lack of merit.

SO ORDERED.^[10]

The RTC, in its Order dated January 3, 2006, denied respondent's Motion for Reconsideration.^[11]

Respondent filed with the CA a Petition for *Certiorari*^[12] where he sought to have the RTC Orders set aside, and prayed that he be allowed to proceed with the auction of the subject land including the subject house.

In its November 30, 2006 Decision, the CA granted the Petition for *Certiorari*, to wit:

WHEREFORE, the petition is GRANTED. The assailed orders dated August 30, 2005 and January 3, 2006 issued by the RTC, in Civil Case No. SCA 03-0010, are REVERSED and SET ASIDE, and ***the sheriff is ordered to proceed with the public auction sale of the subject lot covered by TCT No. 383714, including the house constructed thereon.***

SO ORDERED.^[13] (Emphasis supplied.)

Petitioners filed a motion for reconsideration but the CA denied the same in its Resolution^[14] of April 30, 2007.

Hence, the present petition on the sole ground that the CA erred in holding that the RTC committed grave abuse of discretion in denying the motion for contempt of court.

The assailed CA Decision and Resolution must be modified for reasons other than those advanced by petitioners.

The contempt proceeding initiated by respondent was one for indirect contempt. Section 4, Rule 71 of the Rules of Court prescribes the procedure for the institution of proceedings for indirect contempt, viz:

Sec. 4. *How proceedings commenced.* – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (Emphases supplied.)

Under the aforecited second paragraph of the Rules, the requirements for initiating an indirect contempt proceeding are a) that it be initiated by way of a verified petition and b) that it should fully comply with the requirements for filing initiatory pleadings for civil actions. In *Regalado v. Go*,^[15] we held:

As explained by Justice Florenz Regalado, ***the filing of a verified petition that has complied with the requirements for the filing of initiatory pleading, is mandatory*** x x x:

This new provision clarifies with a regularity norm the proper procedure for commencing contempt proceedings. While such proceeding has been classified as special civil action under the former Rules, the heterogenous practice tolerated by the courts, has been for any party to file a motion without paying

any docket or lawful fees therefore and without complying with the requirements for initiatory pleadings, which is now required in the second paragraph of this amended section.

x x x x

Henceforth, except for indirect contempt proceedings initiated *motu proprio* by order of or a formal charge by the offended court, all charges shall be commenced by a verified petition with full compliance with the requirements therefore and shall be disposed in accordance with the second paragraph of this section.

x x x x

Even if the contempt proceedings stemmed from the main case over which the court already acquired jurisdiction, the rules direct that the petition for contempt be treated independently of the principal action. Consequently, the necessary prerequisites for the filing of initiatory pleadings, such as the filing of a verified petition, attachment of a certification on non-forum shopping, and the payment of the necessary docket fees, must be faithfully observed.

x x x x

The provisions of the Rules are worded in very clear and categorical language. In case where the indirect contempt charge is not initiated by the courts, the filing of a verified petition which fulfills the requirements on initiatory pleadings is a prerequisite. Beyond question now is the mandatory requirement of a verified petition in initiating an indirect contempt proceeding. Truly, prior to the amendment of the 1997 Rules of Civil Procedure, mere motion without complying with the requirements for initiatory pleadings was tolerated by the courts. At the onset of the 1997 Revised Rules of Civil Procedure, however, such practice can no longer be countenanced.^[16] (Emphasis ours.)

The RTC erred in taking jurisdiction over the indirect contempt proceeding initiated by respondent. The latter did not comply with any of the mandatory requirements of Section 4, Rule 71. He filed a mere Urgent Manifestation and Motion for Contempt of Court, and not a verified petition. He likewise did not conform with the requirements for the filing of initiatory pleadings such as the submission of a certification against forum shopping and the payment of docket fees. Thus, his unverified motion should have been dismissed outright by the RTC.

It is noted though that, while at first the RTC overlooked the infirmities in respondent's unverified motion for contempt, in the end, it dismissed the motion, albeit on substantive grounds. The trouble is that, in the CA decision assailed herein, the appellate court committed the same oversight by delving into the merits of respondent's unverified motion and granting the relief sought therein. Thus, strictly speaking, the proper disposition of the present petition ought to be the reversal of

the CA decision and the dismissal of respondent's unverified motion for contempt filed in the RTC for being in contravention of Section 4, Rule 71.

However, such simplistic disposition will not put an end to the dispute between the parties. A seed of litigation has already been sown that will likely sprout into another case between them at a later time. We refer to the question of whether the subject house should be included in the public auction of the subject land. Until this question is finally resolved, there will be no end to litigation between the parties. We must therefore deal with it squarely, here and now.

The RTC and the CA differed in their views on whether the public auction should include the subject house. The RTC excluded the subject house because respondent never alleged its existence in his complaint for partition or established his co-ownership thereof.^[17] On the other hand, citing Articles 440,^[18] 445^[19] and 446^[20] of the Civil Code, the CA held that as the deceased owned the subject land, he also owned the subject house which is a mere accessory to the land. Both properties form part of the estate of the deceased and are held in co-ownership by his heirs, the parties herein. Hence, the CA concludes that any decision in the action for partition of said estate should cover not just the subject land but also the subject house.^[21] The CA further pointed out that petitioners themselves implicitly recognized the inclusion of the subject house in the partition of the subject land when they proposed in their letter of August 5, 2004, the following swapping-arrangement:

Sir:

Thank you very much for accommodating us even if we are only poor and simple people. We are very much pleased with the decision of Presiding Judge Manuel B. Fernandez, Jr., RTC Br. 254, Las Piñas, on the sharing of one-third (1/3) each of a land covered by Transfer Certificate of Title No. 383714 (84191) in Las Piñas City.

However, to preserve the sanctity of our house which is our residence for more than twenty (20) years, we wish to request that the 1/3 share of John Nabor C. Arriola be paid by the defendants depending on the choice of the plaintiff between item (1) or item (2), detailed as follows:

(1) Swap with a 500-square meters [sic] lot located at Baras Rizal x x x.

(2) Cash of P205,700.00 x x x.

x x x x.^[22]

We agree that the subject house is covered by the judgment of partition for reasons postulated by the CA. We qualify, however, that this ruling does not necessarily countenance the immediate and actual partition of the subject house by way of public auction in view of the suspensive proscription imposed under Article 159 of The Family Code which will be discussed forthwith.

It is true that the existence of the subject house was not specifically alleged in the complaint for partition. Such omission notwithstanding, the subject house is deemed part of the judgment of partition for two compelling reasons.