

FIRST DIVISION

[G.R. NO. 144882, February 04, 2005]

**LUISA BRIONES-VASQUEZ, PETITIONER, VS. COURT OF APPEALS
AND HEIRS OF MARIA MENDOZA VDA. DE OCAMPO,
RESPONDENTS.**

DECISION

AZCUNA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure, assailing the Resolution of the Court of Appeals in CA-G.R. CV No. 39025, dated June 9, 2000, which denied petitioner's motion for clarificatory judgment and the Resolution of the Court of Appeals, dated August 3, 2000, which denied the motion for reconsideration.

Under an agreement denominated as a *pacto de retro* sale, Maria Mendoza Vda. De Ocampo acquired a parcel of land from Luisa Briones. The latter thereunder reserved the right to repurchase the parcel of land up to December 31, 1970.^[1]

Maria Mendoza Vda. De Ocampo passed away on May 27, 1979.^[2] On June 14, 1990, Hipolita Ocampo Paulite and Eusebio Mendoza Ocampo, the heirs of Maria Mendoza Vda. De Ocampo, filed a petition for consolidation of ownership, alleging that the seller was not able to exercise her privilege to redeem the property on or before December 31, 1970.^[3]

The Regional Trial Court (RTC) of Pili, Camarines Sur, Branch 32 rendered a Decision^[4] on January 30, 1992 as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. declaring that exh. "A " is a true *pacto de retro* sale;
2. declaring that the defendant can still redeem the property within 30 days from the finality of this judgment, subject to the provisions of Art. 1616 of the New Civil Code;
3. No costs.

SO ORDERED.^[5]

Plaintiffs therein -- herein private respondents -- appealed the RTC Decision to the Court of Appeals.^[6] On June 29, 1995, the Court of Appeals promulgated a Decision^[7] and disposed of the case in the following manner:

THE FOREGOING CONSIDERED, the contested decision is hereby set aside; and declaring the 1970 sale with right of repurchase, Exhibit "A," as one of an equitable mortgage.

SO ORDERED.^[8]

Respondents filed a motion for reconsideration which the Court of Appeals denied through a Resolution,^[9] dated December 15, 1995. The Court of Appeals Decision became final and executory and entry of judgment was made on July 17, 1996.^[10]

Subsequently, at the RTC, both petitioner and respondents filed their respective motions for a writ of execution. The RTC issued a writ of execution. However, the writ was returned unserved per sheriff's return which reads as follows:

Respectfully returned to this Court thru the Clerk of Court VI, RTC, Pili, Camarines Sur the herein attached original copy of the Writ of Execution issued in the above-entitled case with the following information, to wit:

That the plaintiffs [herein private respondents] were informed that the writ of execution was already issued for implementation and that they should pay the necessary sheriff's and kilometrage fees;

That [one of] the plaintiff[s] came to the Office of the Clerk of Court VI but did not deposit any amount for the kilometrage fee and for the expenses in the implementation of the said writ, but instead plaintiff said that he is not interested to implement such writ;

That the 60-day period within which the said writ should be implemented has already expired.

WHEREFORE, the original copy of the Writ of Execution is hereby returned unserved.

Cadlan, Pili, Camarines Sur – July 8, 1997

For the Clerk of Court VI and
Ex-Officio Provincial Sheriff

by:

(signed)
EDDIE M. ROSERO
Sheriff IV^[11]

Petitioner thereafter filed a motion for an alias writ of execution. This was granted by the RTC:^[12]

ALIAS WRIT OF EXECUTION

T O : The Sheriff or any person

authorized
to serve process, RTC, Br. 32, Pili,
C.s.

THRU : THE CLERK OF COURT VI and EX-
OFFICIO
PROVINCIAL SHERIFF
Regional Trial Court
Pili, Camarines Sur

GREETINGS :

WHEREAS, on January 20, 1992, a decision was rendered by this Court,
the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as
follows:

1. declaring that Exh. "A" is a true pacto de retro sale;
2. declaring that the defendant can still redeem the property within 30
days from the finality of this judgment, subject to the provisions of
Art. 1616 of the New Civil Code.
3. No costs."

WHEREAS, in an order of this Court dated June 16, 1992, the notice of
appeal filed by counsel for the defendant has been granted and the Clerk
of Court V of this Court transmitted the entire records of the case to the
Court of Appeals, Manila;

WHEREAS, on June 29, 1995, a decision was rendered by the Court of
Appeals, Manila, the dispositive portion of which reads as follows:

"THE FOREGOING CONSIDERED, the contested decision is
hereby set aside; and declaring the 1970 sale with right of
repurchase, "Exh. "A" as one of an equitable mortgage."

WHEREAS, on March 5, 1997, the Hon. Nilo A. Malanyaon, Presiding
Judge of this Court issued an order granting the issuance of a writ of
execution, hereunder quoted as follows:

"It appearing that the decision of the Court of Appeals had
become final and executory, and an entry of final judgment
had already been issued by the Honorable Court of Appeals,
let a writ of execution issue."

WHEREAS, on July 10, 1997, Sheriff Eddie M. Rosero submitted his
return:

"WHEREFORE, the original copy of the Writ of execution is
hereby returned unserved."

WHEREAS, on July 18, 1997, the Hon. Nilo A. Malanyaon issued an
Order:

"The motion for issuance of alias writ of execution filed by counsel for the defendant, Atty. Lucille Fe R. Maggay-Principe, is hereby granted.

Consequently, the Clerk of Court of this Court is directed to issue alias writ of execution."

WHEREFORE, you the Provincial Sheriff of Camarines Sur or his lawful deputy is hereby commanded to effect the satisfaction of the above-quoted decision of the Honorable Court of Appeals, Manila. Return this writ to this Court within sixty (60) days from your receipt hereof.

WITNESS THE HON. NILO A. MALANYAON, Judge of this Court, this 21st day of July, 1997, at Cadlan, Pili, Camarines Sur.

(Sgd.) LALAIN P. MONSERATE
Officer-In-Charge
Legal Researcher II

The Sheriff was unable to effect the satisfaction of the alias writ as stated in the sheriff's report, which is worded thus:

This is to report on the status of the implementation of the Alias Writ of Execution issued in the above-entitled case, to wit:

That on August 6, 1997 the plaintiff[s] represented by Sps. Policarpio Paulite and Hipolita Ocampo and Eusebio M. Ocampo personally received copy of the Alias Writ of Execution but they refused to sign on the original copy of the said writ, together with the letter of advise informing them to withdraw at any time the amount deposited to the Office of the Clerk of Court VI, RTC, Pili, Camarines Sur by defendant Luisa Briones so that the mortgage may now be deemed released or cancelled.

That until this time the said plaintiff[s] failed and or did not bother to withdraw the said amount deposited by defendant Luisa Briones despite letter of advice and the alias writ of execution having been personally received by them.

Cadlan, Pili, Camarines Sur – September 9, 1997.

For the Clerk of Court
and
Ex-Officio Sheriff
by:

(signed)
EDDIE M. ROSERO
Sheriff IV^[13]

Unable to effect the execution of the Court of Appeals decision, petitioner filed with the RTC an omnibus motion, dated May 25, 1999, praying:

WHEREFORE, it is respectfully prayed that an order issue:

- a) Declaring the equitable mortgage, Exhibit "A", discharged;
- b) Directing the issuance of a Writ of Possession against the plaintiffs for the delivery of possession of the land in question to the defendant.^[14]

The RTC denied the omnibus motion in an Order dated November 16, 1999, which states:

Acting on the omnibus motion of plaintiff dated 25 May 1999 and the opposition thereto of defendant, and considering that the decision of the Court of Appeals referring the decision of this Court has become final and executory, hence, this Court can no longer alter, modify or add anything thereto, the prayers set forth in the omnibus motion is, as it is, hereby denied.

SO ORDERED.^[15]

Petitioner filed a motion for reconsideration^[16] of the above Order, which was denied by the RTC in an Order dated February 23, 2000.^[17]

Petitioner then filed a motion for clarificatory judgment, dated April 5, 2000, with the Court of Appeals.^[18] The motion was denied in a Resolution, dated June 9, 2000, which reads as follows:

The only issues that reached Us, through an appeal, was whether the 1970 Sale with Right of Repurchase was actually an equitable mortgage. We ruled, it was, necessarily there is nothing to clarify.

If it is a matter however whether the prevailing party should be entitled to a right to repossess the property, then the remedy is not with Us, but with the Court below.

For lack of merit, the Motion for Clarificatory Judgment is hereby DENIED.

SO ORDERED.^[19]

Petitioner filed a motion for reconsideration of the above Resolution. The Court of Appeals denied the same in a Resolution dated August 3, 2000.^[20]

Petitioner now comes to this Court raising the following issues:

PETITIONER SUBMITS THAT THE PUBLIC RESPONDENT ACTED ARBITRARILY, WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE FOLLOWING RESOLUTIONS:

A) RESOLUTION DATED JUNE 9, 2000, DENYING PETITIONER'S MOTION