

FIRST DIVISION

[G.R. NO. 152808, September 30, 2005]

**ANTONIO T. CHUA, PETITIONER, VS. TOTAL OFFICE PRODUCTS
AND SERVICES (TOPROS), INC., RESPONDENT.**

DECISION

QUISUMBING, J.:

For review on *certiorari* is the decision^[1] dated November 28, 2001 of the Court of Appeals and its resolution^[2] of April 1, 2002 in CA-G.R. SP No. 62592. The assailed decision and resolution dismissed the special civil action for *certiorari* against the orders of August 9, 2000^[3] and October 6, 2000^[4] issued by Judge Lorifel Lacap Pahimna in Civil Case No. 67736.

The pertinent facts, based on the records, are as follows:

On December 28, 1999, respondent Total Office Products and Services, Inc., (TOPROS) lodged a complaint for annulment of contracts of loan and real estate mortgage against herein petitioner Antonio T. Chua before the Regional Trial Court of Pasig City. The case was docketed as Civil Case No. 67736 and was raffled to the *sala* of Judge Lorifel Lacap Pahimna.

The said suit sought to annul a loan contract allegedly extended by petitioner to respondent TOPROS in the amount of ten million four hundred thousand pesos (P10,400,000) and the accessory real estate mortgage contract covering two parcels of land situated in Quezon City as collateral.

It appeared on the face of the subject contracts that TOPROS was represented by its president John Charles Chang, Jr. However, TOPROS alleged that the purported loan and real estate mortgage contracts were fictitious, since it never authorized anybody, not even its president, to enter into said transaction.

On February 28, 2000, petitioner filed a motion to dismiss on the ground of improper venue. He contended that the action filed by TOPROS affects title to or possession of the parcels of land subject of the real estate mortgage. He argued that it should thus have been filed in the Regional Trial Court of Quezon City where the encumbered real properties are located, instead of Pasig City where the parties reside.

On August 9, 2000, Judge Pahimna issued an order denying the motion to dismiss. She reasoned that the action to annul the loan and mortgage contracts is a personal action and thus, the venue was properly laid in the RTC of Pasig City where the parties reside.

Petitioner moved for a reconsideration of the said order, which Judge Pahimna

denied in its order of October 6, 2000. Hence, petitioner filed with the Court of Appeals a special civil action for *certiorari* alleging:

THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE RULING OF THE SUPREME COURT IN PASCUAL VS. PASCUAL REGARDING THE RULE ON PROPER VENUE, AND CONSEQUENTLY ADJUDGING TO BE A PERSONAL ACTION A CIVIL COMPLAINT FOR THE ANNULMENT OF AN ALLEGEDLY FICTITIOUS CONTRACT.^[5]

The Court of Appeals dismissed said petition in its decision dated November 28, 2001. It held that the authorities relied upon by petitioner, namely *Pascual v. Pascual*^[6] and *Banco Español-Filipino v. Palanca*,^[7] are inapplicable in the instant case. The appellate court instead applied *Hernandez v. Rural Bank of Lucena, Inc.*^[8] wherein we ruled that an action for the cancellation of a real estate mortgage is a personal action if the mortgagee has not foreclosed the mortgage and the mortgagor is in possession of the premises, as neither the mortgagor's title to nor possession of the property is disputed.

Dissatisfied, petitioner filed a motion for reconsideration, which the Court of Appeals denied for lack of merit in its resolution of April 1, 2002.

Undeterred, petitioner now comes to us on a petition for review raising the following issues:

WHETHER AN ACTION TO ANNUL A LOAN AND MORTGAGE CONTRACT DULY ALLEGED AS 'FICTITIOUS' FOR BEING WITH ABSOLUTELY NO CONSIDERATION IS A PERSONAL ACTION OR REAL ACTION?

WHETHER IN AN ACTION TO ANNUL A LOAN AND MORTGAGE CONTRACT DULY ALLEGED AS 'FICTITIOUS' FOR BEING WITH ABSOLUTELY NO CONSIDERATION, THE PERSON ALLEGED TO HAVE '[LACKED] AUTHORITY' TO ENTER INTO SAID CONTRACTS IS AN INDISPENSABLE PARTY?^[9]

Petitioner contends that *Hernandez* should not be applied here because in the said case: (1) venue was improperly laid at the outset; (2) the complaint recognized the validity of the principal contract involved; and (3) the plaintiff sought to compel acceptance by the defendant of plaintiff's payment of the latter's mortgage debt. He insists that the *Pascual* case should be applied instead. He invokes our pronouncement in *Pascual*, to wit:

... It appearing, however, that the sale is alleged to be fictitious, with absolutely no consideration, it should be regarded as a non-existent, not merely null, contract.... And there being no contract between the deceased and the defendants, there is in truth nothing to annul by action. The action brought cannot thus be for annulment of contract, but is one for recovery of a fishpond, a real action that should be, as it has been, brought in Pampanga, where the property is located....^[10]

Petitioner likewise cites the *Banco Español-Filipino* case, thus:

Where the defendant in a mortgage foreclosure lives out of the Islands and refuses to appear or otherwise submit himself to the authority of the court, the jurisdiction of the latter is limited to the mortgaged property, with respect to which the jurisdiction of the court is based upon the fact that the property is located within the district and that the court, under the provisions of law applicable in such cases, is vested with the power to subject the property to the obligation created by the mortgage. In such case personal jurisdiction over the nonresident defendant is nonessential and in fact cannot be acquired.^[11]

Petitioner also alleges that John Charles Chang, Jr., the president of TOPROS, who allegedly entered into the questioned loan and real estate mortgage contracts, is an indispensable party who has not been properly impleaded.

TOPROS, however, maintains that the appellate court correctly sustained the lower court's finding that the instant complaint for annulment of loan and real estate mortgage contracts is a personal action. TOPROS points out that a complaint for the declaration of nullity of a loan contract for lack of consent and consideration remains a personal action even if the said action will necessarily affect the accessory real estate mortgage.

TOPROS argues that *Pascual* is inapplicable because the subject contract therein was a contract of sale of a parcel of land where title and possession were already transferred to the defendant. TOPROS further contends that *Banco Español-Filipino* is also inapplicable since the personal action filed therein was one which affected the personal status of a nonresident defendant.

Considering the facts and the submission of the parties, we find the petition bereft of merit.

Well-settled is the rule that an action to annul a contract of loan and its accessory real estate mortgage is a personal action. In a personal action, the plaintiff seeks the recovery of personal property, the *enforcement of a contract* or the recovery of damages.^[12] In contrast, in a real action, the plaintiff seeks the recovery of real property, or, as indicated in Section 2 (a), Rule 4 of the then Rules of Court, a real action is an action affecting title to real property or for the *recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property*.^[13]

In the *Pascual* case, relied upon by petitioner, the contract of sale of the fishpond was assailed as fictitious for lack of consideration. We held that there being no contract to begin with, there is nothing to annul. Hence, we deemed the action for annulment of the said fictitious contract therein as one constituting a real action for the recovery of the fishpond subject thereof.

We cannot, however, apply the foregoing doctrine to the instant case. Note that in *Pascual*, title to and possession of the subject fishpond had already passed to the vendee. There was, therefore, a need to recover the said fishpond. But in the instant case, ownership of the parcels of land subject of the questioned real estate mortgage was never transferred to petitioner, but remained with TOPROS. Thus, no real action for the recovery of real property is involved. This being the case, TOPROS' action for annulment of the contracts of loan and real estate mortgage