512 Phil. 253

THIRD DIVISION

[G.R. No. 141241, November 22, 2005]

REPUBLIC OF THE PHILIPPINES, THROUGH ITS TRUSTEE, THE ASSET PRIVATIZATION TRUST, PETITIONER, VS. "G" HOLDINGS, INC., RESPONDENT.

D E C I S I O N

CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the December 21, 1999 resolution[1] of the Court of Appeals (CA) dismissing the petition for annulment of judgment in CA-G.R. SP No. 53517.

On May 21, 1992, the Committee on Privatization approved the proposal of the Asset Privatization Trust (APT) for the negotiated sale of 90% of the shares of stock of the government-owned Maricalum Mining Corporation (MMC). Learning of the government's intention to sell MMC, the respondent "G" Holdings, Inc. signified its interest to purchase MMC and submitted the best bid.

The series of negotiations between the petitioner Republic of the Philippines, through the APT as its trustee,[2] and "G" Holdings culminated in the execution of a purchase and sale agreement on October 2, 1992. Under the agreement, the Republic undertook to sell and deliver 90% of the entire issued and outstanding shares of MMC, as well as its company notes, to "G" Holdings in consideration of the purchase price of P673,161,280. It also provided for a down payment of P98,704,000 with the balance divided into four tranches payable in installment over a period of ten years.

Subsequently, a disagreement on the matter of when the installment payments should commence arose between the parties. The Republic claimed that it should be on the seventh month from the signing of the agreement while "G" Holdings insisted that it should begin seven months after the fulfillment of the closing conditions.

Unable to settle the issue, "G" Holdings filed a complaint for specific performance and damages with the Regional Trial Court of Manila, Branch 49, against the Republic to compel it to close the sale in accordance with the purchase and sale agreement. The complaint was docketed as Civil Case No. 95-76132.

During the pre-trial, the respective counsels of the parties manifested that the issue involved in the case was one of law and submitted the case for decision. On June 11, 1996, the trial court rendered its decision. It ruled in favor of "G" Holdings and held:

> In line with the foregoing, this Court having been convinced that the Purchase and Sale Agreement is indeed subject to the final closing

conditions prescribed by Stipulation No. 5.02 and conformably to Rule 39, Section 10 of the Rules of Court, accordingly orders that the Asset Privatization Trust execute the corresponding Document of Transfer of the subject shares and financial notes and cause the actual delivery of subject shares and notes to "G" Holdings, Inc., within a period of thirty (30) days from receipt of this Decision, and after the "G" Holdings, Inc. shall have paid in full the entire balance, at its present value of P241,702,122.86, computed pursuant to the prepayment provisions of the Agreement. Plaintiff shall pay the balance simultaneously with the delivery of the Deed of Transfer and actual delivery of the shares and notes.

SO ORDERED.[3]

The Solicitor General filed a notice of appeal on behalf of the Republic on June 28, 1996. Contrary to the rules of procedure, however, the notice of appeal was filed with the Court of Appeals (CA), not with the trial court which rendered the judgment appealed from.

No other judicial remedy was resorted to until July 2, 1999 when the Republic, through the APT, filed a petition for annulment of judgment with the CA. It claimed that the decision should be annulled on the ground of abuse of discretion amounting to lack of jurisdiction on the part of the trial court. It characterized the fashion by which the trial court handled the case as highly aberrant and peculiar because the court *a quo* promulgated its decision prior to the submission of the Republic's formal offer of evidence and without ruling on the admissibility of the evidence offered by "G" Holdings. The Republic also asserted that the failure of the Solicitor General to file the notice of appeal with the proper forum amounted to extrinsic fraud which prevented it from appealing the case.

Finding that the grounds necessary for the annulment of judgment were inexistent, the appellate court dismissed the petition. It ruled that there was no extrinsic fraud because "G" Holdings had no participation in the failure of the Solicitor General to properly appeal the decision of the trial court. Neither was there any connivance between "G" Holdings' and the Republic's counsels in the commission of the error.

The appellate court also held that the trial court had jurisdiction over the subject matter of the case, as well as over the person of the parties. Hence, whatever error the trial court committed in the exercise of its jurisdiction was merely an error of judgment, not an error of jurisdiction. As an error of judgment, it was correctable by appeal. Unfortunately, appeal could no longer be availed of by the Republic.

The appellate court further declared that there was no grave abuse of discretion on the part of the court *a quo* when it decided the case before its receipt of the Republic's formal offer of evidence. The evidence of both parties was already in the possession of the court and painstakingly considered before the decision was arrived at. Thus, if at all, the trial court perpetrated an "irregularity" which should have been the subject of an appeal. But no appeal was perfected and the decision of the trial court thus attained finality.

The Republic now assails the resolution of the appellate court on the following grounds:

I

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHICH RESULTED IN THE NULLITY OF THE TRIAL COURT'S DECISION

A

THE TRIAL COURT RENDERED ITS DECISION EVEN PRIOR TO THE SUBMISSION OF PETITIONER'S FORMAL OFFER OF EVIDENCE AND EVEN BEFORE PETITIONER COULD FILE ITS COMMENT TO RESPONDENT'S FORMAL OFFER OF EVIDENCE

B

THE TRIAL COURT RENDERED ITS DECISION WITHOUT RULING ON THE ADMISSION OF THE EVIDENCE OFFERED BY RESPONDENT

II

THE FAILURE OF THE [SOLICITOR GENERAL] TO FILE THE NOTICE OF APPEAL WITH THE PROPER FORUM AMOUNTED TO EXTRINSIC FRAUD WHICH PREVENTED THE PETITIONER FROM APPEALING THE CASE WITH THE COURT OF APPEALS.[4]

Before anything else, we note that the instant petition suffers from a basic infirmity for lack of the requisite imprimatur from the Office of the Solicitor General, hence, it is dismissible on that ground.[5] The general rule is that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines and that actions filed in the name of the Republic, or its agencies and instrumentalities for that matter, if not initiated by the Solicitor General, should be summarily dismissed.[6] As an exception to the general rule, the Solicitor General is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."[7]

Here, the petition was signed and filed on behalf of the Republic by Atty. Raul B. Villanueva, the executive officer of the legal department of the APT, and Atty. Rhoel Z. Mabazza.[8] However, they did not present any proof that they had been duly deputized by the Solicitor General to initiate and litigate this action. Thus, this petition can be dismissed on that ground.

In the interest of justice, however, we shall proceed to discuss the issues propounded by the Republic.

A petition for annulment of judgment is an extraordinary action.[9] By virtue of its exceptional character, the action is restricted exclusively to the grounds specified in the rules,[10] namely, (1) extrinsic fraud and (2) lack of jurisdiction.[11] The

rationale for the restriction is to prevent the extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.[12] The remedy may not be invoked where the party has availed himself of the remedy of new trial, appeal, petition for relief or other appropriate remedy and lost, or where he has failed to avail himself of those remedies through his own fault or negligence.[13]

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[14] Where the court has jurisdiction over the defendant and over the subject matter of the case, its decision will not be voided on the ground of absence of jurisdiction.

The Republic does not deny that the trial court had jurisdiction over it as well as over the subject matter of the case. What the Republic questions is the grave abuse of discretion allegedly committed by the court *a quo* in rendering the decision.

We cannot agree with the Republic.

First, the interpretation of the Republic contravenes the very rationale of the restrictive application of annulment of judgment. By seeking to include acts committed with grave abuse of discretion, it tends to enlarge the concept of lack of jurisdiction as a ground for the availment of the remedy.

In a petition for annulment of judgment based on lack of jurisdiction, the petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction.[15] Thus, the concept of lack of jurisdiction as a ground to annul a judgment does not embrace abuse of discretion.

Second, by claiming grave abuse of discretion on the part of the trial court, the Republic actually concedes and presupposes the jurisdiction of the court to take cognizance of the case. Hence, the Republic effectively admits that the two grounds for which lack of jurisdiction may be validly invoked to seek the annulment of a judgment – want of jurisdiction over the parties and want of jurisdiction over the subject matter – do not exist. It only assails the manner in which the trial court formulated its judgment in the exercise of its jurisdiction.

Jurisdiction is distinct from the exercise thereof. We amply explained the distinction between the two in *Tolentino v. Leviste,*[16] thus:

> Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

Finally, no grave abuse of discretion can be imputed to the trial court when it rendered the decision. The pieces of evidence considered by the court a quo to arrive at its decision were documents attached as annexes to the various pleadings