

## SECOND DIVISION

[ G.R. No. 131794, December 10, 2003 ]

**RUBEN AUGUSTO AND ATTY. NOEL D. ARCHIVAL, PETITIONERS,  
VS. HON. JUDGE TEODORO K. RISOS, PRESIDING JUDGE,  
REGIONAL TRIAL COURT, BRANCH 27, LAPU-LAPU CITY, CLEOFE  
OMOLON, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for certiorari under Rule 65 of the 1997 Rules of Court, as amended, filed by Ruben Augusto and Atty. Noel D. Archival, for the nullification of the December 5, 1997 Order<sup>[1]</sup> of the Regional Trial Court Branch 7, Lapu-Lapu City.

### THE ANTECEDENTS

Felisa Augusto and her siblings, Jose Augusto, Magdalena Augusto and Alfonso Augusto, all married, were the co-owners of a parcel of land, identified as Cadastral Lot No. 4429, with an area of 1,857 square meters. The lot is located in Barrio Mactan, Opon, Cebu.

On April 20, 1961, the then Justice of the Peace and Ex-Officio Notary Public notarized a Deed of Absolute Sale where Felisa, Jose, Magdalena and Alfonso, all surnamed Augusto, sold the property to Guillermo Omolon for P200.00. Guillermo Omolon and his wife, Cleofe Omolon, caused the aforesaid document to be registered in the Office of the City Assessor of Lapu-Lapu City. Tax Declaration No. 02729 was issued thereafter, and the vendors took possession of the property.

In the meantime, the property was registered in the names of Monico, Felisa, Jose, Filomeno, Teofilo and Sinfroso, all surnamed Augusto, under Original Certificate of Title (OCT) No. RO-3560.

Guillermo Omolon died intestate and was survived by Cleofe Omolon.

Sometime in July 1995, Cleofe Omolon filed a petition for the reconstitution of the OCT covering Lot No. 4429, before the RTC of Lapu-Lapu City, Branch 54, docketed as LRC Case No. 21. On January 10, 1997, the RTC rendered a decision, the dispositive portion of which reads:

WHEREFORE, all premises considered, the Court grants the petition and thus directs the Register of Deeds of Lapu-Lapu City to reconstitute the Original Certificate of Title for Lot No. 4429 of the Cadastral Survey of Opon strictly in accordance with the technical description of said lot.<sup>[2]</sup>

However, upon presentation of the aforesaid order to the Office of the Register of Deeds of Lapu-Lapu City, Cleofe was informed that the owner's copy had already been issued to Ruben Augusto, pursuant to an Order issued by the court dated August 23, 1996, and that based on the record, the same was in the possession of Atty. Noel Archival.

Hence, on May 14, 1997, Cleofe filed a petition before the RTC of Lapu-Lapu City, docketed as Cad. Case No. 21, alleging that as lawful co-owner and possessor of Lot No. 4429, she had every right to have and hold the owner's duplicate of the said OCT. She prayed that after due proceedings, the respondents Ruben Augusto and Atty. Noel Archival be ordered to surrender the owner's copy of the said title:

WHEREFORE, it is most respectfully prayed of this Honorable Court that after due consideration, respondents be ordered to surrender the owner's copy of Original Certificate of Title No. 3560 of the Register of Deeds of Lapu-Lapu City to the petitioner herein. [3]

In their Comment on the petition, therein respondents Ruben Augusto and Atty. Noel Archival alleged, *inter alia*, that the Deed of Absolute Sale executed by Felisa, Magdalena, Alfonso and Jose, all surnamed Augusto, was falsified and fictitious, and, thus, null and void. In the *interim*, Cleofe had her adverse claim annotated at the dorsal portion of the title in the Office of the Register of Deeds of Lapu-Lapu City.

On October 22, 1997, the RTC issued an order directing Atty. Noel Archival to produce the owner's copy of OCT No. 3560 to allow the annotation of Cleofe's interest, upon which the owner's duplicate copy of the title may thereafter be returned:

WHEREFORE, respondent Atty. Noel Archival is hereby directed to produce the owner's copy of OCT No. 3560, before the Office of the Clerk of Court within ten (10) days from receipt of this order to allow the annotation of petitioner's interest, after which title may be returned to the respondent.

Furnish copies of this order to petitioner and respondents as well as their respective counsels. [4]

The trial court declared that, based on the pleadings of the parties, the issue of ownership over the property had been raised, a matter which the court, sitting as a cadastral court, could not pass upon. The trial court further ruled that pending resolution of the issue of ownership over the property in an appropriate proceedings therefor, there was a need for the annotation of the petitioners' interest over the property. The respondents therein filed a "Motion for a Partial Reconsideration" of the Order alleging that Cleofe's interest over the property had been sufficiently protected by the annotation of her adverse claim. The respondents suggested that:

WHEREFORE, it is respectfully prayed of this Honorable Court to partially reconsider its Order dated 22 October 1997 and issue a new order enjoin (sic) the respondent to produce the owner's copy of OCT No. 3560 before the Office of the Register of Deeds, Lapu-Lapu City on 25 November 1997 at 2:30 p.m. Other reliefs just and equitable are likewise prayed for under the premises.

Cebu City, 06 November 1997, Philippines.<sup>[5]</sup>

However, on November 14, 1997, the court issued an Order denying the motion of the respondents therein.

On November 26, 1997, the respondents filed a notice of appeal from the said order to the Court of Appeals. On December 5, 1997, the RTC issued an order denying due course therefor, on its perception that the orders subject thereof were interlocutory; hence, not appealable.

The respondents, now the petitioners, filed the instant petition alleging that the public respondent committed a grave abuse of discretion amounting to excess or lack of jurisdiction when it issued the assailed orders, and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law available to them. The petitioners argue that contrary to the ruling of the public respondent, its October 22, 1997 Order was final and appealable, as the same disposed of the case.

In her comment on the petition, the private respondent averred that the October 22, 1997 Order of the public respondent was merely interlocutory as it did not fully dispose of the case and had reserved the further determination of other questions. By its order, the RTC merely required the petitioners to present the owner's copy of OCT No. 3560 in the Office of the Register of Deeds for the annotation of her proprietary interest over the property and ordered the return of the said owner's duplicate to the respondents after such annotation.

### **THE RULING OF THE COURT**

Section 1, Rule 41 of the Rules of Court provides that an appeal may be taken only from a final order, and not from an interlocutory one.<sup>[6]</sup> A final order is one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.

<sup>[7]</sup> An order or judgment is deemed final if it finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and concludes them until it is reversed or set aside. Where no issue is left for future consideration, except the fact of compliance with the terms of the order, such order is final and appealable.<sup>[8]</sup> In contrast, an order is interlocutory if it does not finally dispose of the case.

In this case, the order of the public respondent directing the petitioners to produce the owner's copy of OCT No. 3560 in the Office of the Register of Deeds for the annotation of the private respondent's interest over the property is merely interlocutory and not final; hence, not appealable by means of a writ of error. The public respondent had not fully disposed of the case as it had not yet ruled on whether to grant the private respondent's prayer for the surrender of the owner's copy of OCT No. 3560. As gleaned from the order of the respondent judge, he believed that he had no jurisdiction to delve into and resolve the issue of ownership over the property and was disposed to dismiss the petition. Before so doing, he believed it was necessary that the petitioner's claim over the property be annotated