

NINTH DIVISION

[CA – G.R. SP NO. 138598, March 26, 2015]

**SPOUSES ARNOLD TAMONDONG AND WILMA TAMONDONG,
PETITIONERS, VS. REGIONAL TRIAL COURT, BRANCH 91, STA.
CRUZ LAGUNA PRESIDED BY JUDGE DIVINA GRACIA ONGKEKO,
SPOUSES ALFONSO DIMAANO, JR. AND BEATRIZ
DIMAANO,RESPONDENTS.**

D E C I S I O N

DICDICAN, J.:

Before us is a Petition for Annulment of Judgment^[1] filed by petitioners Spouses Arnold and Wilma Tamondong ("petitioners") seeking to annul the August 28, 2013 Decision^[2] of Branch 91 of the Regional Trial Court of the Fourth (4th) Judicial Region situated in Sta Cruz, Laguna ("trial court") in Civil Case No. SC-5226 ordering herein petitioners to pay Spouses Alfonso and Beatriz Dimaano the amount of Seven Hundred Forty-Eight Thousand Twenty Five Pesos (P748,025.00) and attorney's fees.

The material and relevant facts of the case, as culled from the records, are as follows:

Private respondents Spouses Alfonso and Beatriz Dimaano ("private respondents") filed a Complaint^[3] in the trial court for rescission of contract, collection of sum of money and damages against the petitioners. In the said complaint, the private respondents alleged that they entered into an agreement with herein petitioners for the organization, setting-up and operation of a partnership business. The private respondents, however, lamented that the petitioners violated the terms of their Partnership Agreement^[4] when the latter, instead, registered a sole proprietorship and not a partnership business, using the money of the partnership. Consequently, the private respondents prayed for the cancellation of the partnership agreement and for the trial court to order the petitioners to return the full amount of their investment.

On May 23, 2012, summons was attempted to be served upon the petitioners at the aforesaid address at No. 20 Papua St., cor. Mindanao Ave., Ext., Bagbag, Quezon City. However, the summons was returned unserved as per the Sheriff's Return dated May 23, 2012 where the process server stated therein that:

"x x x the undersigned exerted time and effort to locate the defendants Sps. Arnold P. Tamondong and Wilma S. Tamondong at Audi Marketing, No. 20, Papua Street, Cor. Mindanao Ave., Brgy. Talipapa, Quezon City but failed on the ground that the defendants were no longer connected with Audi Marketing, the defendants are now residing in abroad, somewhere in Singapore.

"In effect a certification was issued by the Brgy. Talipapa, Quezon City to attest the veracity of my report.

"The summons is hereby respectfully returned UNSERVED^[5]."

On July 9, 2012, the private respondents filed their *Ex-Parte* Motion for Leave of Court^[6] to cause the service of summons by publication. On July 27, 2012, the Court *a quo* issued an Order^[7] which granted the private respondents' motion. The copy of the complaint and summons were published in a newspaper of general circulation called "Hataw"^[8]. Thereafter, the private respondents filed an *ex-parte* motion to declare the defendants in default and to take the deposition of the plaintiffs spouses. Consequently, the RTC granted the motion of the private respondents and allowed them to present their evidence *ex parte*.

On August 28, 2013, the court *a quo* rendered a Decision in favor of the private respondents the dispositive portion of which reads:

"WHEREFORE, the court finds merit to the complaint of the plaintiffs Alfonso B. Dimaano, Jr. and Beatriz P. Dimaano against the defendants Sps. Arnold and Wilma Tamondong. The defendants are hereby ordered to pay the plaintiffs in the amount of Seven Hundred Forty-Eight Thousand, Twenty Five Pesos **(P748,025.00)**, attorney's fees in the amount of **P35,000** and **costs of suit**.

"SO ORDERED"^[9]."

On April 21, 2014, the private respondents filed an *ex-parte* motion for the issuance of writ of execution^[10] which the trial court granted on May 28, 2014. On May 29, 2014, the trial court issued a Writ of Execution^[11] in favor of the private respondents.

In the meantime, the petitioners averred that they were not aware of the civil case that was filed against them in the trial court. Thus, upon their discovery of the decision of the court *a quo*, the petitioners filed the instant petition for the annulment of the August 28, 2013 decision of the trial court on the ground of extrinsic fraud and lack of jurisdiction.

In the instant petition, the petitioners averred that they could no longer avail of the remedies such as new trial, petition for relief from judgment or reconsideration, as they have only learned of the judgment that was rendered against them on September 25, 2014.

Moreover, the petitioners alleged that the decision of the trial court was void in view of extrinsic fraud that was committed by the private respondents. According to the petitioners, the private respondents were well aware that they were residing at No. 97, P. Jacinto, Grace Park, Caloocan City and, yet, they still stated another address in Quezon City which was not the address of the petitioners. As a result of such misrepresentation by the private respondents, summons was thus served at the wrong address which, thereafter, prevented them from participating in the proceedings in the case.

Further, the petitioners also contended that the court *a quo* did not acquire jurisdiction over their persons. Considering the false allegation of the private respondents as to their whereabouts, service of summons by publication was improperly made.

In fine, the primordial issue to be resolved by us in the instant petition is whether or not the assailed decision of the court *a quo* may be annulled on the ground of extrinsic fraud and lack of jurisdiction.

After a careful analysis of the record of the case, together with the applicable law and jurisprudence in the premises, we find that the petition filed in this case is not meritorious.

Prefatorily, Rule 47 of the Revised Rules of Court governs the manner by which a petition for annulment of judgment may be availed of. In particular, Sections 1, 2 and 3 of the said rule provide as follows:

"Section 1. *Coverage*. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.

"Section 2. *Grounds for annulment*. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction. Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

"Section 3. *Period for filing action*. - If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel."

Under the Rule, an action for annulment of judgment may only be availed of on the following grounds: (1) extrinsic fraud and (2) lack of jurisdiction. A petition for annulment of judgment is an extraordinary action. By virtue of its exceptional character, the action is restricted exclusively to the grounds specified in the rules^[12].

In the instant case, the petition was filed by the petitioners on the grounds of extrinsic fraud and lack of jurisdiction of the trial court. Petitioners in this case alleged that fraud and deception were employed upon them by the private respondents in order to deprive them of their opportunity to present their case in court.

Based on the afore-cited Rule, one important condition for the availment of this remedy is for the petitioner to show that he or she had failed to move for a new trial in, or appeal from, or file a petition for relief against, or take other appropriate remedies assailing the questioned judgment or final order or resolution of the trial court through no fault attributable to him. If he or she failed to avail of these other remedies without sufficient justification, he or she could not resort to the action for annulment provided in this Rule, otherwise he or she would benefit from his own