

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 03829-MIN, January 08, 2014]

**VIRGINIA MUGAS, PETITIONER, VS. THE HONORABLE
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT-BRANCH 34,
PANABO CITY, DAVAO DEL NORTE AND RICARDO S. MORAL,
RESPONDENTS.**

DECISION

INTING, J.:

Before Us is petitioner's Petition for Certiorari under Rule 65 of the Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction assailing the Order^[1] dated January 29, 2010 of the Regional Trial Court (hereinafter court *a quo*), Branch 34, Panabo City, Davao del Norte in Special Civil Case No. 10-2003 and the Order^[2] dated July 22, 2010 denying herein petitioner's motion for reconsideration.

The facts of the case are as follows:

On January 23, 2003, Virginia Mugas borrowed the sum of P258,000.00 from Ricardo S. Moral. To secure the payment of her debt, Mugas mortgaged the one-hectare portion of her parcel of land covered by Homestead Patent No. (XI-2) 1281 and registered under Original Certificate of Title (OCT) No. P-16919^[3]. The loan and mortgage were contained in a document denominated as *Kasabutan*^[4] dated January 23, 2003. Under the agreement, Mugas bound herself to give fifteen (15) sacks of *palay* to Moral every harvest time as lease in the concept of interest. However, Mugas allegedly failed to comply with the agreement.

On May 6, 2003, Moral sent Mugas a letter demanding from her to deliver the 15 sacks of *palay*. Mugas allegedly received the demand letter^[5] but refused to acknowledge receipt thereof.

Consequently, Moral filed a Complaint^[6] on June 10, 2003 before the RTC for foreclosure of mortgage, damages and attorney's fees. The court *a quo* accordingly issued summons for Mugas to submit her answer. The summons was received personally by Mugas on July 29, 2003. The defendant's counsel, Atty. Camilo F. Naraval submitted an Ex-Parte Motion for Extension of Time to File an Answer on August 12, 2003, which was granted by the court *a quo* in its Order dated August 13, 2003 and received by Atty. Naraval on August 20, 2003. However, no answer was filed thereafter by Atty. Naraval representing the defendant.

Plaintiff Moral, through counsel, filed a Motion to Declare Defendant in Default on September 10, 2003. The motion, after hearing, was granted by the court *a quo*. On October 30, 2003, a Decision was rendered by the court *a quo*, the dispositive portion of which provides:

WHEREFORE, in view of all the foregoing, judgment by default is hereby rendered in favor of plaintiff Ricardo S. Moral and against Virginia Mugas, ordering the latter to pay to the former the sum of TWO HUNDRED FIFTY EIGHT THOUSAND (P258,000.00) PESOS plus interests thereon at the rate of fifteen (15) sacks of palay every harvest with each sack of palay weighing fifty (50) kilos, beginning with the May 6, 2003 harvest as well as to pay the costs to this Court within ninety (90) days from the date of service of the judgment and, in the event of default of such payment, the mortgaged real property covered by Original Certificate of Title No. P-16919 registered in the name of defendant Virginia Mugas shall be sold to realize the mortgaged debt, interests and costs.

SO ORDERED.

With the finality of the decision, Moral submitted a Motion for Execution^[7] on November 3, 2004 which was granted by the court *a quo* in its Order^[8] dated November 11, 2004. The corresponding Writ of Execution^[9] was issued and the Sheriff, after having implemented the writ, submitted a return on the writ with a report that the writ of execution had already been fully satisfied. The subject real property mentioned in the decision was foreclosed and sold at public auction to Moral in the amount of the indebtedness of P258,000.00 which was a full satisfaction of the mortgage debt. The sale was also confirmed^[10] by the court *a quo*.

Thereafter, Moral filed a Motion for the Issuance of a Writ of Possession^[11] over the property covered by OCT No. P-16919. The motion was granted by the court *a quo*.

The court *a quo* noted that the subpoenas or notices to Atty. Naraval, starting with the subpoena for the hearing of the motion for the issuance of writ of possession dated February 15, 2008 had been returned with the notation "DECEASED". Also, the subpoena or notice sent to Mugas herself for the hearing of the same motion was likewise returned with the notation "UNKNOWN".

Hence, on June 5, 2008, the Writ of Possession^[12] was issued and the Sheriff made a return with a report that the writ was fully satisfied. Moral then submitted a Motion for the Issuance of a Writ of Demolition^[13] on December 8, 2008. It was during the hearing of the motion that Mugas appeared together with a new counsel, Atty. Harold Sator, who manifested the intention of his client to redeem the property as stated in the Order of the court *a quo* dated February 13, 2009.

Subsequently, a certain Rufino M. Pagaduan submitted a Motion for Intervention through counsel Atty. Harold Sator. Pagaduan alleged that he has an interest in the case at bar being an agricultural lessee of Mugas, who is the registered owner of the subject property. He claimed that he had erected a residential house on the subject property in the year 1990 occupied by him, his wife and children.

Mugas, through counsel, then submitted the Omnibus Motion (Motion to Set Aside Writs of Execution and Possession and Opposition to Motion for Issuance of Writ of Demolition) on June 16, 2009. She alleged that she was not afforded her day in court because of the gross negligence of her counsel Atty. Naraval, which amounted to extrinsic and collateral fraud that deprived her of the right to be heard or due process of law. The motion also stated that the judgement rendered by the court *a*

quo is void by reason of lack of due process and collateral extrinsic fraud. The judgment being void, it can never attain finality and any writ of execution based on it is void.

Atty. Sator also filed a Motion for Withdrawal of Appearance for the defendant-intervenor Pagaduan which was granted by the court *a quo*. A new lawyer for defendant-intervenor, in the person of Atty. Angeliza Razo, entered an appearance which was duly noted by the court *a quo*.

In the hearing held on August 18, 2009 which was called purposely for the three motions, the court *a quo* noted the absence of Moral's counsel despite notice. Thus, the counsel was directed to submit a comment to the Motion for Intervention and Omnibus Motion submitted by Mugas and defendant-intervenor Pagaduan. No comment was however filed.

On January 29, 2010, the court *a quo* issued the assailed Order, the *fallo* of which reads:

WHEREFORE, considering the foregoing disquisition, this court hereby DENIES both the Omnibus Motion (Motion to Set Aside Writs of Execution and Possession and Opposition to Motion for Issuance of Writ of Demolition) submitted by the defendant and the Motion for Intervention submitted by defendant-intervenor Pagaduan while action on the Motion to Issue a Writ of Demolition is hereby DEFERRED until such time that mediation shall have been conducted among the parties.

Set, therefore, the mediation conference of this case on March 12, 2010 at 2:00 o'clock in the afternoon. Notify the plaintiff and the defendant and their counsels of the scheduled mediation.

SO ORDERED.

The court *a quo* ratiocinated:

Xxx Upon initial evaluation, this Court is of the assessment that even if the defendant movant only prayed for the setting aside of the writs of execution and possession, she is really in essence also moving that the judgment rendered by the court on October 30, 2003 be declared void by reason of negligence or extrinsic/collateral fraud which action is really a petition for relief from judgment as defined under Rule 38 of the Rules of Court since this cannot proceed to set aside the writs of execution and possession without voiding the judgment previously rendered by this court.

Xxx

Such receipt by the defendant of a copy of the writ of execution should have already impelled her to do some acts to protect her rights over the alleged property. But, defendant did not do anything since said receipt of the writ of execution on January 12, 2005 and the first act that she did was when she, through her lawyer, filed a Manifestation praying before this court that the case be brought to mediation. It was not even a Petition for Relief from Judgment that was filed.

Xxx this court evaluates that the Omnibus Motion failed to comply with the requirements of a Petition for Relief from Judgment under Rule 38 of the Rules of Court. The movant had not filed her motion within the reglementary period of 60 days from the time she learned of the decision which was from the time she received a copy of the writ of execution on January 12, 2005. She only filed the instant Omnibus Motion last June 16, 2009 or more than for (sic) years after her knowledge of the adverse decision.

Xxx

Under Section 1, Rule 19, it is apparent that the court is given the discretion to determine whether or not the intervention will unduly delay the adjudication of the rights of the original parties or whether or not the intervenor's rights may be fully protected in as (sic) separate proceedings.

Instantly, this court believes that allowing the would-be intervenor to intervene in this case will clearly delay the adjudication of the right of the plaintiff in this case which had already won in the case. Moreover, it is the assessment of the court that the right of the would-be intervenor may still be fully protected in a separate proceedings or action which may file against the plaintiff herein.

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Mugas and Pagaduan filed a motion for reconsideration but the court *a quo* denied it in its Order^[14] dated July 22, 2010.

Hence, the instant petition.

Petitioner Mugas now comes before Us raising the following assignment of errors^[15]:

I.

TO DENY PETITIONER'S ACTION TO ANNUL THE JUDGMENT BASED ON EXTRINSIC OR COLLATERAL FRAUD BECAUSE OF PRESCRIPTION WOULD RESULT TO GROSS MISCARRIAGE OF JUSTICE CONSIDERING PETITIONER POSSESSES STRONG, VALID AND MORAL GROUNDS TO COUNTERACT PRIVATE RESPONDENT'S CLAIM.

II.

OTHER THAN EXTRINSIC OR COLLATERAL FRAUD, PETITIONER'S GROUND FOR HER ACTION TO ANNUL JUDGMENT ALSO CONSISTS OF LOWER COURT'S WANT OF JURISDICTION, WHICH PRESCRIBES IN TEN (10) YEARS.

III.

RES JUDICATA DOES NOT APPLY IN THE CASE AS THE ASSAILED JUDGMENT IS RENDERED BY A COURT HAVING NO JURISDICTION AND IS NOT A JUDGMENT ON THE MERITS.