

EIGHTH DIVISION

[CA-G.R. CV NO. 100487, May 27, 2014]

**CRISTINA OCAMPO-FERRER, PLAINTIFF-APPELLANT, VS.
ELDEFONSO G. DEL ROSARIO, JOSEFINO R. ORTIZ, AND THE
REGISTER OF DEEDS OF LAS PIÑAS CITY, DEFENDANTS-
APPELLEES.**

D E C I S I O N

REYES, JR., J.C., J.:

Before Us is an appeal of the Decision dated November 9, 2012 rendered by the Regional Trial Court (RTC), Branch 198 of Las Piñas City, in Civil Case No. LP-07-0037. The dispositive portion of the appealed Decision reads:

“WHEREFORE, premises considered, the instant complaint is hereby DISMISSED for lack of merit. The defendant's counterclaims are also dismissed on the same ground. Defendant DEL ROSARIO is ordered to return the Owner's Duplicate Copy of TCT No. T-165897 to CRISTINA.

SO ORDERED.” (Rollo, p. 87)

The antecedents as culled from the evidentiary records:

Sometime in February 2001, plaintiff-appellant Cristina Ocampo-Ferrer (hereinafter Cristina) obtained a loan in the amount of Php850,000.00 from defendant-appellee Eldefonso G. Del Rosario (hereinafter Del Rosario). Said loan was for the purpose of redeeming her rights, interests and participation over a parcel land situated in Las Piñas City and covered by Transfer Certificate of Title (TCT) No. 30480, which was sold at public auction on November 9, 1999. For value received, she executed a promissory note (Records, Vol. 1, p. 24) binding herself to pay the loan in installments at Php40,000.00 per month, for a period of four (4) years starting on March 20, 2001 until April 20, 2005. As security for the loan, Cristina executed a Real Estate Mortgage (Records, Vol. 1, pp. 21-23) in favor of Del Rosario over a parcel of land owned by her son Alfredo Ocampo Ferrer II, situated in Calauan, Laguna and covered by TCT No. T-165897. Pursuant to said mortgage, she delivered to Del Rosario her son's owner's duplicate copy of TCT No. T-165897.

Cristina, however, defaulted in the payment of her loan obligation to Del Rosario. Despite repeated demands to pay, the latest of which was through a letter dated March 28, 2003, she failed and refused to pay her obligation. As a consequence thereof, Del Rosario filed a complaint for sum of money (Records, Vol. 1, pp. 26-31) against her, before the Regional Trial Court of Las Piñas City. The case was docketed as Civil Case No. LP-03-0088.

During the mediation proceedings of Civil Case No. LP-03-0088, Cristina and Del Rosario submitted a Compromise Agreement (Records, Vol. 1, p. 34) dated December 8, 2004, which essentially provided that Cristina shall pay Del Rosario the

amount of Php1,200,000.00 on or before June 19, 2005. Further, it provided that upon Del Rosario's receipt of the full amount of Php1,200,000.00, he shall return the owner's duplicate copy of TCT No. T-165897.

In an Order (Records, Vol. 1, pp. 36-37) dated December 10, 2004 issued by Branch 275 of the RTC of Las Piñas City, the Compromise Agreement dated December 8, 2004 was approved and adopted as the decision in Civil Case No. LP-03-0088.

On September 8, 2005, Del Rosario filed a Motion for Execution in Civil Case No. LP-03-0088. In an Order dated December 16, 2005, the RTC of Las Piñas City, Branch 275, granted Del Rosario's motion. Accordingly, a Writ of Execution (Records, Vol. I, pp. 668-669) was issued on December 28, 2005.

On January 4, 2006, defendant-appellee Josefino Ortiz (hereinafter Sheriff Ortiz), Sheriff IV of the RTC of Las Piñas City, Branch 275, issued a Demand/Notice to Pay (Records, Vol. I, p. 670) to Cristina. Said notice was received on January 5, 2006 by Fernando Ferrer II, Cristina's son.

On January 11, 2006, Sheriff Ortiz issued a Notice of Levy Upon Realty (Records, Vol. I, p. 671) to the Register of Deeds of Las Piñas City, levying upon whatever rights, interests and participation Cristina may have on a parcel of land situated in Pamplona, Las Piñas City which is covered by TCT No. 30480.

In a Notice of Sale on Execution of Real Property (Records, Vol. I, pp. 672-673) dated January 12, 2006, Sheriff Ortiz announced that the public auction sale of the levied property was scheduled on February 20, 2006.

During the scheduled auction sale, Del Rosario came out as the sole and highest bidder and a Certificate of Sale dated February 20, 2006 was issued in his favor. (Records, Vol. I, p. 676) Said certificate of sale was later annotated on February 22, 2006.

On February 22, 2007, Cristina filed a complaint (Records, Vol. I, pp. 2-9) before RTC - Branch 198 of Las Piñas City, seeking the annulment of sheriff's sale as well as payment of damages. She essentially alleged that Del Rosario and Sheriff Ortiz committed unlawful acts in enforcing the writ of execution in Civil Case No. LP-03-0088.

In their Answer with Affirmative Defenses and Counterclaim (Records, Vol. I, pp. 55-61) filed on March 28, 2007, appellees Del Rosario and Sheriff Ortiz vehemently denied that they have committed unlawful acts against Cristina. As an affirmative defense, they raised that Cristina's complaint is already barred by prior judgment rendered in Civil Case No. LP-03-0088 and that the judgment based on compromise rendered in said case was never challenged by Cristina. They likewise averred by way of affirmative defense that Branch 198 of the RTC of Las Piñas City has no jurisdiction over the complaint for annulment of sheriff's sale for being a co-equal court of RTC - Branch 275 thereof.

After trial on the merits, RTC - Branch 198 rendered the challenged decision (Rollo, pp. 80-87) on November 9, 2012. It explained that Cristina failed to discharge the burden of proving that the actions taken by Del Rosario and Sheriff Ortiz in levying upon and selling the property covered by TCT No. 30480 through auction sale on February 20, 2006, were unlawful and illegal.

Cristina's motion for reconsideration was subsequently denied in an Order dated February 8, 2013.

Hence, this appeal raising the following assignment of errors:

"1. THE COURT A QUO COMMITTED REVERSIBLE ERRORS IN NOT FINDING THAT THE DEFENDANT-APPELLEE SHERIFF FAILED TO COMPLY STRICTLY WITH THE PROVISIONS OF SECTION 9, RULE 39 OF THE 1997 RULES OF CIVIL PROCEDURE WHEN HE PROCEEDED DIRECTLY WITH THE LEVY AND AUCTION SALE OF THE REAL PROPERTY SUBJECT OF THE LITIGATION[;]

2. IN RELATION TO THE FIRST ASSIGNED ERROR, THE COURT A QUO ALSO ERRED IN NOT HOLDING THAT THE CERTIFICATE OF SALE DATED 20 FEBRUARY 2006 CONCERNING THE PLAINTIFF-APPELLANT'S CO-OWNED PROPERTY COVERED BY TCT NO. 30480 AND THE ANNOTATION THEREON UNDER ENTRY NO. 4757-26 AS NULL AND VOID AND WITHOUT LEGAL FORCE AND EFFECT[;] [AND]

3. THE COURT A QUO COMMITTED REVERSIBLE ERROR IN FINDING THAT PLAINTIFF-APPELLANT FAILED TO ESTABLISH HER CASE BY PREPONDERANCE OF EVIDENCE." (Rollo, p. 61)

This Court GRANTS the appeal.

The procedure in enforcing a money judgment is found in Section 9, Rule 39 of the 1997 Rules of Civil Procedure. It reads:

"SEC. 9. *Execution of judgments for money, how enforced.* —

(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

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(b) *Satisfaction by levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.