

THIRD DIVISION

[G.R. No. 204272, January 18, 2021]

**MARYLOU R. ANCHETA, IN HER AND ON BEHALF OF HER
MISSING FORMER COMMON-LAW HUSBAND RICARDO DIONILA,
PETITIONER, VS. MARY CAMBAY,** RESPONDENT.**

D E C I S I O N

Hernando, J.:

This Petition for Review on *Certiorari*^[1] assails the March 16, 2012 Decision^[2] and the October 18, 2012 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 102517 which denied the Petition for Annulment of Judgment filed by herein petitioner Marylou R. Ancheta (Ancheta). The assailed Decision and Resolution of the CA were rendered in connection with the August 31, 2005 Decision^[4] of the Regional Trial Court (RTC), Branch 14 of Lagawe, Ifugao in a case filed by herein respondent Mary Cambay (Cambay) entitled "*Mary Cambay v. Vivian Ancheta and Spouses Ricardo Dionila and Marilou Ancheta*" and docketed as SPL Civil Action No. 64 ordering petitioner and her co-defendants therein to pay Cambay P50,000.00 plus interest at the rate of 24% per *annum* starting one year after June 16, 2003 until fully paid. **Factual Antecedents:** On June 12, 2003, Vivian Ancheta (Vivian) obtained a loan from Cambay in the amount of P25,000.00 with a 10% monthly interest payable within two months from even date. As security for the loan, Vivian executed a Real Estate Mortgage^[5] in favor of Cambay over a parcel of land located in Bayombong, Nueva Vizcaya. Considering, however, that said parcel of land was registered under the names of Ancheta and her former common-law-spouse Ricardo Dionila (Dionila) under Transfer Certificate of Title (TCT) No. T-5 8527,^[6] Ancheta and Dionila allegedly executed on June 10, 2003 a Special Power of Attorney (SPA)^[7] in favor of Vivian authorizing her to use the land as collateral for her loan with Cambay. On June 16, 2003, Vivian obtained another loan from Cambay in the amount of P25,000.00 evidenced by a Promissory Note.^[8] Alleging that Vivian failed to settle her obligation upon maturity despite repeated demands, Cambay filed on August 30, 2004 a Complaint for Judicial Foreclosure of Mortgage^[9] against Vivian, Ancheta, and Dionila before the RTC. Ancheta narrated that while summons was served on and received by Vivian, no summons ever reached her (Ancheta) and/or Dionila. Meanwhile, Vivian filed a Motion for Extension of Time to File Answer^[10] with the RTC, which the latter favorably acted upon per its September 29, 2004 Order.^[11] However, neither Vivian, Ancheta, nor Dionila filed an Answer to Cambay's Complaint. Meanwhile, the RTC scheduled a pre-trial Conference on March 16, 2005 but was later reset to May 18, 2005 in an Order dated March 16, 2005.^[12] A copy of the March 16, 2005 Order of the RTC was not personally served on Ancheta and Dionila. A copy thereof, however, was supposedly received by their son, Ricmar John A. Dionila.^[13] After trial on the merits, the RTC, on August 31, 2005, rendered a

Decision^[14] by default against Vivian, Ancheta, and Dionila the dispositive portion of which reads:

WHEREFORE, judgment by default is hereby issued in favor of the plaintiff pursuant to Sec. 2 Rule 68. The court hereby finds the amount of P50,000.00 plus interest at the rate of 24% per annum starting one year after June 16, 2003 until fully paid to be due payable to the plaintiff. Defendants are directed to pay the said amount of money to the court or to the judgment [obligee] within 120 days from entry of judgment and in default of such payment the property shall be sold at public auction. **SO ORDERED.**^[15]

The August 31, 2005 Decision of the RTC became final and executory, and entered in the book of entries of judgment on September 26, 2005.^[16] Subsequently, the Clerk of Court and *ex-officio* Provincial Sheriff implemented the August 31, 2005 Decision of the RTC and, by virtue of an Absolute Deed of Sale^[17] dated May 22, 2007, sold the parcel of land to Cambay. Cambay subsequently consolidated her ownership over the property which resulted in the issuance of TCT No. T-145718 in her favor by the Register of Deeds of Nueva Viscaya^[18] and the cancellation of TCT No. T-58527^[19] in the names of Ancheta and Dionila. On August 14, 2006, Ancheta filed with the RTC a Petition for Relief from Judgment^[20] arguing, among others, that: (1) Ancheta came to know of the case docketed as SPL Civil Action No. 64 only sometime in February 2006; (2) no summons was personally served on her and/or Dionila; and (3) the June 10, 2003 SPA purportedly executed by Ancheta and Dionila empowering Vivian to utilize the land as security for her loan with Cambay was falsified, and thus, null and void. The RTC, in its October 17, 2006 Order^[21] docketed as SPL Civil Case No. 82, dismissed Ancheta's Petition for Relief of Judgment, ratiocinating as follows:

The rule is explicit and mandatory that the petition must be filed within sixty (60) days after he/she learns of the judgment and not later than Six (6) months after judgment or final order was entered. Apparently, the petition was filed years after the judgment was rendered. Hence, the petition has to be dismissed. Further, the Rule requires that the petition must be accompanied by an affidavit showing that fraud, accident, mistake, or excusable negligence attended or contributed to the failure of defendant to partake in the proceedings of the case. In the instant petition, the affidavit fails to state facts constituting fraud, accident, mistake or excusable negligence. The allegations contain only substantial cause of defense which are collateral matters, such as the validity of the special power of attorney. Petitioner contends that the special power of attorney which was purportedly executed by her is null and void for it is a forged one. Such defense could not be entertained, because the validity of a public document cannot be assailed collaterally. There must be an action filed to declare it void, for the presumption that it was duly executed before the notary public.^[22]

Undeterred, Ancheta assailed the August 31, 2005 Decision of the RTC in SPL Civil Action No. 64 by filing with the CA on February 29, 2008 a Petition for Annulment of Judgment under Rule 47 of the Rules of Court on the ground of lack of jurisdiction over the persons of Ancheta and Dionila.^[23] **Ruling of the Court of Appeals:** On

March 16, 2012, the CA rendered its assailed Decision^[24], dismissing Ancheta's Petition for Annulment of Judgment, as follows:

WHEREFORE, the petition is **DISMISSED**. The Petition for Annulment of Judgment cannot be availed of because Petitioner already resorted to Petition for Relief from Judgment and lost therefrom. **SO ORDERED.**^[25]

According to the CA -

Since Petitioner had already availed of the remedy of petition for relief of judgment, she could no longer avail of a petition for annulment of judgment. x x x As mentioned earlier, the remedy [of a Petition for Annulment of Judgment] may not be invoked where the party already resorted to certain remedies, such as a petition for relief, and only lost in the process.^[26]

Ancheta thus moved for the reconsideration of the March 16, 2012 Decision of the appellate court. In her Motion for Reconsideration,^[27] Ancheta emphasized that her petition was grounded on lack of jurisdiction, not extrinsic fraud. She argued that while extrinsic fraud is not a valid ground under a Petition for Annulment of Judgment if the same was already previously availed of, or could have been availed of, in a petition for relief, no such rule is applicable with respect to relief from judgment grounded on lack on jurisdiction. In its assailed October 18, 2012 Resolution,^[28] the appellate court denied Ancheta's Motion for Reconsideration. Hence, the instant petition.

Issues

[A] Whether a named defendant in a judicial foreclosure case who was not served with summons may file an action for annulment of judgment which was rendered by default; and [B.] Whether a prior resort [to] a relief from judgment, albeit erroneously availed of, bars a resort to the remedy of annulment of judgment.^[29]

Simply put, the issue in this case is whether or not the CA erred when it dismissed Ancheta's Petition for Annulment of Judgment. In her Petition, Ancheta maintains that only the ground of extrinsic fraud, not lack of jurisdiction, is excluded as a valid ground for a petition for annulment under Rule 47 of the Rules of Court if the same ground was availed of, or could have been availed of, in a petition for relief under Rule 38 of the same rules. Ancheta also insists that "a party who has previously availed of the remedy of Petition for Relief of Judgment, albeit an erroneous remedy, is not precluded from resorting to the correct remedy of Petition for Annulment of Judgment."^[30] For her part, Cambay maintains in her Comment^[31] that Ancheta can no longer resort to an action for annulment of judgment since she had already filed a petition for relief with the RTC which she lost. **Our Ruling** The Petition is meritorious. **Ancheta availed of the remedy of a Petition for Relief from Judgment with the RTC.** The records show that Ancheta made inconsistent claims before the RTC and the CA, specifically, as to when she acquired knowledge of the proceedings in SPL Civil Action No. 64 and the judgment by default rendered by the RTC on August 31, 2005. In particular, while Ancheta, on one hand, stated in her petition for relief that she "came to know of the [case] only sometime during the last week of February, 2006 x x x,"^[32] her petition for annulment, on the other hand, stated that she "learned for the first that the assailed judgment by default

was rendered against her sometime in April 2006 x x x."^[33] Notably, despite Ancheta's assertion in her petition for annulment, the appellate court, for its part, underscored the allegation in her petition for relief, *i.e.*, that she acquired knowledge of SPL Civil Action No. 64 "during the last week of February 26," and on the basis thereof, dismissed Ancheta's petition for annulment, with the following ratiocination:

In the case at bar, it is evident that Petitioner, after learning about the RTC's August 31, 2005 *Decision "during the last week of February 2006", filed a Petition for Relief from Judgment*. Unfortunately, the RTC denied the same for lack of merit based on the following reasons: (1) the petition was filed beyond the reglementary period provided under Section 3, Rule 38 of the Rules of Court; x x x. Since petitioner has already availed of the remedy of petition for relief from judgment, she could no longer avail of a petition for annulment of judgment.^[34] (Underscoring supplied; italics in the original)

Ancheta, however, asserts in her petition before this Court that her previous filing of a petition for relief with the RTC in SPL Civil Action No. 82 cannot, under the circumstances, be considered an *appropriate or proper remedy* under Section I^[35] of Rule 47 of the Rules of Court because it was no longer legally and procedurally available to her at the time she acquired knowledge of the proceedings in SPL Civil Action No. 64 sometime in April 2006. Ancheta insists that the CA erred in dismissing her petition for annulment since under the circumstances of her case, she could not have timely filed a petition for relief with the RTC in the first place. This Court, however, is not inclined to embark on an extended discussion on whether the petition for relief filed by Ancheta with the RTC was proper or appropriate, or whether the same was filed beyond the period prescribed by the Rules of Court. It is beyond the province of this Court to disturb the findings in the October 17, 2006 Order of the RTC in SPL Civil Case No. 82, for it is not our function to re-examine a decision not the subject of review in this petition and which has long attained finality. On this point, the Court establishes as a foregone fact, there being no issue raised on the matter, that Ancheta indeed had already availed of the remedy of a petition for relief with the RTC which the latter dismissed in its October 17, 2006 Order. Considering the foregoing, the pith of the issue, therefore, lies in whether Ancheta is already barred from filing with the CA a petition for annulment of judgment under Rule 47 of the Rules of Court. **Ancheta is not precluded from filing a petition for annulment of judgment with the CA.** Rule 47 of the Rules of Court provides for the remedy of annulment of judgment with the appellate court of the judgments, final orders, and resolutions of the RTCs in civil actions for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. Significantly, Section 2, Rule 47 of the Rules limits the ground for the action of annulment of judgment to either extrinsic fraud or lack of jurisdiction, *viz.*:

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.** (Underscoring and emphasis supplied)