

## THIRD DIVISION

[ G.R. No. 191079, March 02, 2016 ]

**JOEL CARDENAS, HEIR OF THE LATE ELINAIDA L. ALCANTARA,  
REPRESENTED BY ANTONIO IGNACIO, JR., PETITIONER, VS.  
HEIRS OF THE LATE SPOUSES SIMPLICIA P. AGUILAR AND  
MAXIMO V. AGUILAR AND ATTY. NORMAN R. BUENO,  
RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

This is a Petition for Review on *Certiorari* filed pursuant to Rule 45 of the Revised Rules of Court, assailing the Orders<sup>[1]</sup> dated 13 October 2009 and 18 January 2010 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198. In its assailed Orders the RTC directed the execution of its 27 February 2009 Decision.

#### *The Facts*

On 8 November 2000, Elinaida L. Alcantara (Alcantara) obtained a loan from the Spouses Maximo and Simplicia Aguilar (Spouses Aguilar) in the amount of P3,000,000.00 with fixed interest of P720,000.00. As a security for the said obligation, Alcantara executed an agreement denominated as *Venta con Pacto de Retro* (Sale With Right to Repurchase)<sup>[2]</sup> in favor of the Spouses Domingo over a parcel of land with an area of 410 square meters and registered under Transfer Certificate of Title (TCT) No. T-37319<sup>[3]</sup> under her name (subject property). It was agreed by the parties that the term of the loan shall be one year from the date of the execution of the contract on 8 November 2000 with a grace period of six months. After Alcantara failed to repurchase the subject property within the stipulated period, she sought for the extension of the period to exercise her right to repurchase which was granted by Melba A. Clavo de Comer, daughter of the Spouses Domingo, as shown in a letter 6 June 2002.<sup>[4]</sup>

In December 2002, Joel A. Cardenas (Cardenas), son of Alcantara, sought to exercise for himself, and on behalf of his mother, the redemption of the subject property by offering to pay the entire amount of the loan including the interest thereon, but it was refused by the Spouses Aguilar.

This prompted Alcantara to initiate Civil Case No. LP-02-0300 for the Reformation of Instrument and Specific Performance against the Spouses Aguilar, their daughter, Melba A. Clavo de Comer and her husband, Dan Clavo de Comer (Spouses de Comer) and Antonio Malinao, in his capacity as Register of Deeds of Las Piñas City. In her Complaint docketed as Civil Case No. LP-02-0300, plaintiff sought that the instrument denominated as *Venta con Pacto de Retro* be declared as equitable mortgage and to direct defendants Spouses Aguilar and Spouses de Comer to accept her offer to pay the loan and to release the mortgage constituted on the subject

property.

After Alcantara passed away, she was substituted by her heir, Cardenas, who filed an Amended Complaint.<sup>[5]</sup>

Before the filing of the Amended Complaint, the counsel for the Spouses Aguilar also manifested that Maximo V. Aguilar likewise passed away by filing a Notice of Death with the trial court and serving a copy thereof on the opposing party. It was stated in the said notice that Maximo V. Aguilar is survived by his spouse, Simplicia P. Aguilar and his daughter, Melba A. Clavo de Comer and that both were already impleaded as original defendants in the complaint.

Subsequently defendants filed an Answer wherein they insisted that their transaction was not an equitable mortgage as claimed by the plaintiffs but a sale with a right to repurchase as clearly stipulated in the contract. Considering that Alcantara failed to exercise her right to repurchase the subject property within the period agreed upon by parties, defendants asked that the title thereon be consolidated in their names. In the alternative, defendants sought that the plaintiffs be directed to repurchase the property in the amount of P3,000,000.00 with an interest of 10% of the purchase price.

After the pre-trial conference, trial on the merits ensued.

On 27 February 2009, the RTC rendered a Decision<sup>[6]</sup> in favor of the plaintiffs and declared that the contract entered into by the parties is equitable mortgage and not a sale with a right to repurchase. Accordingly, the court *a quo* directed the defendants to release the mortgage constituted on the subject property upon payment of the principal amount of the loan. The dispositive portion of the RTC Decision reads:

"WHEREFORE, premises considered, the court hereby declares that the contract entered into by the late Elinaida Alcantara is AN EQUITABLE MORTGAGE and NOT A SALE WITH RIGHT TO REPURCHASE. Accordingly, the parties are hereby ordered, as follows:

- (1)the substituted plaintiff is ordered to pay defendants the principal loan of P3,000,000.00; and
- (2)upon payment, the defendants are ordered to release the mortgage constituted on the property and to deliver the original copy of the owner's duplicate title of the property to the plaintiff.

SO ORDERED.

The period to file for a motion for reconsideration or for an appeal had lapsed but neither of the parties moved for the reconsideration of the decision nor appealed therefrom.

On 27 July 2009, defendants filed a Motion for Execution<sup>[7]</sup> of the RTC Decision which was surprisingly opposed by the plaintiff on the ground that the original defendants (the Spouses Aguilar) in Civil Case No. LP-02-0300 were already dead and no proper substitution of the parties was effected by the counsel as mandated by Section 16, Rule 3 of the Revised Rules of Civil Procedure.

Brushing aside the opposition of the plaintiff, the RTC, in an Order<sup>[8]</sup> dated 13 October 2009, directed the issuance of the Writ of Execution.<sup>[9]</sup>

The Motion for Reconsideration filed by the plaintiff was likewise denied by the lower court in its Order<sup>[10]</sup> dated 18 January 2010.

Arguing that this case involves a genuine question of law, plaintiff (now petitioner herein) elevated the case before the Court and raised the following issues:

### ***The Issues***

#### **I.**

WHETHER OR NOT A MOTION FOR EXECUTION CAN BE FILED BY A COUNSEL WHEN THE JUDGMENT OBLIGEEES WERE ALREADY DEAD AND NEITHER WAS THERE AN EXECUTOR OR ADMINISTRATOR APPOINTED BY THE COURT NOR AN HEIR SUBSTITUTED AS A PARTY TO THE CASE TO AUTHORIZE THE COUNSEL TO MOVE FOR THE EXECUTION OF THE JUDGMENT.

#### **II.**

WHETHER OR NOT THE COURT CAN GRANT A MOTION FOR EXECUTION FILED BY A COUNSEL WHEN THE JUDGMENT OBLIGEEES WERE ALREADY DEAD AND NEITHER WAS THERE AN EXECUTOR OR ADMINISTRATOR APPOINTED BY THE COURT NOR AN HEIR SUBSTITUTED AS A PARTY TO THE CASE.<sup>[11]</sup>

### ***The Court's Ruling***

The resolution of this petition hinges on the propriety of the issuance of the Writ of Execution dated 13 October 2009.

In assailing the RTC Order dated 29 October 2009, petitioner averred that after the death of the original parties to the case, there was no proper substitution of the parties nor was there an appointment of an executor or administrator by the court. To petitioner, this constitutes a procedural *faux pas* which renders the proceedings before the lower court seriously infirmed.

Defendants before the trial court who are now respondents herein, on the other hand, insisted that after the death of Maximo V. Aguilar, a Notice of Death<sup>[12]</sup> was promptly filed by his counsel stating the fact of death and that he is survived by his spouse, Simplicia P. Aguilar, and daughter, Melba A. Clavo de Comer, who were both already impleaded as defendants to the case. While no notice of death was filed after the demise of Simplicia P. Aguilar, respondents argued that such procedural lapse is not fatal since the purpose of such notice is to acquire jurisdiction over the person of the substitute, which is no longer necessary in this case, because Melba A. Clavo de Comer was already part of the action after she was named as co-defendant upon the filing of the Amended Complaint.

After perusing the arguments of the parties, we find it perplexing why the petitioner, after going thru the process of filing the complaint and actively pursuing the case, and, eventually securing a favorable judgment, refused to have the said decision executed. After all, the reliefs mainly sought by the petitioner in his complaint, (*i.e.*, to declare the contract of sale with a right to repurchase as equitable mortgage and to direct the defendants to release the mortgage constituted on the property), were all granted by the court *a quo* as shown in its 27 February 2009 Decision. It is a source of wonder why instead of reveling in his success and pursuing an execution of the decision so as not to render his victory pyrrhic, petitioner inexplicably postured to sleep on his rights by not moving for the satisfaction of the judgment. And, when respondents took upon themselves the initiative to, have the judgment executed, petitioner in all absurdity opposed it by hurling all possible procedural questions to prevent its satisfaction and even went to the extent of filing the instant petition before the Court.

Let this be a reminder to Atty. Erwin T. Daga, the counsel of the petitioner, not to trifle with court proceedings and needlessly waste the precious time and resources of the court by initiating and actively litigating a case, and, once a favorable judgment is obtained, taking the liberty to turn around completely to prevent its execution on grounds that are even without substance. Courts of law are created to settle the rights and obligations of the litigants and not to cater to every whim and caprice of the parties and their counsel. The remedies that are made available by statutes and the Rules to protect the interests of the parties must be pursued in good faith. A similar abuse of court processes in the future will be dealt with accordingly.

Even granting that petitioner was in good faith in assailing the execution of the RTC Decision, his. argument that the RTC has no jurisdiction to issue the Writ of Execiltion absent proper substitution still holds no water.

The pertinent provision of the Revised Rules of Court provides:

**Section 16. *Death of party; duty of counsel.*** - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the