

SECOND DIVISION

[G.R. No. 183906, February 14, 2011]

**AFP MUTUAL BENEFIT ASSOCIATION, INC., PETITIONER, VS.
REGIONAL TRIAL COURT, MARIKINA CITY, BRANCH 193 AND
SOLID HOMES, INC., RESPONDENTS**

DECISION

ABAD, J.:

This is about a trial court order that gave due course to a petition for relief from judgment that would litigate anew issues between the same parties that had already been once decided with finality.

The Facts and the Case

In 1976 Investco, Inc. (Investco) entered into a contract to sell to Solid Homes, Inc. (Solid Homes) certain properties in Quezon City and in Marikina City. But, because Solid Homes defaulted in payments, Investco sued for specific performance and damages. During the pendency of the action, Investco sold the properties to the Armed Forces of the Philippines Mutual Benefits Association, Inc. (AFPMBAI). Following full payment of the consideration of the sale, the Register of Deeds issued new certificates of title to AFPMBAI covering the properties.^[1]

Subsequently, Solid Homes filed an action against the Register of Deeds, AFPMBAI, and Investco with the Regional Trial Court (RTC) of Marikina City for annotation of *lis pendens* and damages. When the matter reached this Court through two related cases, it rendered a decision, directing the Register of Deeds to cancel Solid Homes' notice of *lis pendens* on AFPMBAI's titles and declared AFPMBAI a buyer in good faith and for value.^[2]

On August 26, 2003 Solid Homes filed another action with the RTC of Marikina City, Branch 193, to cancel the same certificates of title of AFPMBAI. On motion filed by the latter, however, the RTC issued an order dated January 23, 2004, dismissing the complaint on ground of *res judicata* in view of the decision in the previous actions. Solid Homes filed a motion for reconsideration but the RTC denied it. The RTC also denied as prohibited pleading Solid Homes' second motion for reconsideration.^[3]

Undeterred, Solid Homes filed a petition for relief from judgment, that is, from the order of dismissal dated November 26, 2004, claiming that Investco and AFPMBAI committed extrinsic fraud in the proceedings that led to the judgment that the Court rendered against Solid Homes in G.R. 104769 and G.R. 135016. This fraud consisted in AFPMBAI's alleged failure to disclose its knowledge of a prior sale between Investco and Solid Homes. Solid Homes claimed that it had evidence to prove this.^[4]

Meantime, Solid Homes caused the annotation of notices of *lis pendens* on AFPMBAI's titles based on its pending petition for relief from judgment before the RTC.^[5] After hearing on July 18, 2008 the RTC issued an order, giving due course to Solid Homes' petition.^[6]

Without filing a motion for reconsideration of the RTC's July 18, 2008 order, AFPMBAI filed the present petition for prohibition and *mandamus* with application for temporary restraining order and preliminary mandatory injunction directly with this Court.^[7] On August 27, 2008 the Court issued a temporary restraining order, enjoining the Marikina City RTC from further proceeding in the case and Solid Homes from causing the annotation of notice of *lis pendens* on any of AFPMBAI's certificates of title.^[8]

The petition alleged that the RTC gravely abused its discretion in giving due course to Solid Homes' petition for relief from judgment on several grounds:^[9]

1. Solid Homes filed its petition for relief from judgment beyond the period allowed by the rules;^[10]
2. Its petition for relief did not include an affidavit of merit showing the supposed fraud, accident, mistake, and excusable negligence it relied on;^[11]
3. The grounds that Solid Homes invoked--AFPMBAI's alleged fraud in acquiring the subject property--is not the fraud contemplated by Section 2, Rule 38 of the Rules of Civil Procedure;^[12]
4. The grant of Solid Homes' petition for relief based on AFPMBAI's alleged fraud in acquiring its titles to the property subject of the March 3, 2000 decision of the Court in G.R. 104769 and G.R. 135016, *AFPMBAI v. CA*, is already barred by *res judicata*;^[13] and
5. The annotation of a notice of *lis pendens* under Section 14, Rule 13 of the Rules of Civil Procedure is allowed only in actions affecting title to or possession of real property, not petitions for relief from judgment.^[14]

Solid Homes' comment on the petition hardly answered the above grounds. It instead raised threshold issues involving technical defects in AFPMBAI's petition for prohibition and *mandamus*. Thus, Solid Homes claim that:

- a. AFPMBAI did not file the required motion for reconsideration of the RTC order dated July 18, 2008 that it assails in its petition;^[15]
- b. *Mandamus* is not an appropriate remedy and the petition should have been filed with the Court of Appeals (CA) since it raised both questions of fact and law;^[16]

- c. The jurat in the petition's verification and certification erroneously used a community tax certificate as basis for identification;^[17] and
- d. The petition did not contain an affidavit of service and an explanation why personal mode of service was not observed.^[18]

Issues Presented

The case, thus, presents the following issues:

1. Whether or not the petition is technically deficient as Solid Homes points out, justifying its outright dismissal;
2. Whether or not Solid Homes filed its petition for relief from judgment with the RTC beyond the period allowed by the rules;
3. Whether or not such petition include an appropriate affidavit of merit that shows the supposed fraud, accident, mistake, and excusable negligence Solid Homes relied on;
4. Whether or not the fraud that Solid Homes invoked as ground for its petition for relief--AFPMBAI's alleged fraud in acquiring the subject property--is the fraud contemplated by the rules;
5. Whether or not the RTC's grant of Solid Homes' petition for relief based on AFPMBAI's alleged fraud in acquiring its titles to the subject property is barred by *res judicata*; and
6. Whether or not the annotation of a notice of *lis pendens* is allowed in connection with a pending petition for relief from judgment.

Rulings of the Court

One. Regarding AFPMBAI's failure to file a motion for reconsideration of the assailed RTC order, which motion is required prior to the filing of a petition for prohibition or *mandamus*, the Court recognizes certain exceptions to such requirement as enumerated in *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*.^[19] These include situations, such as exists in this case, where the petition raises only pure questions of law and the questioned order is a patent nullity. The direct recourse to this Court rather than to the CA is also justified since the petition raises only questions of law. Section 4, Rule 65 of the Rules of Court states that a petition for prohibition and *mandamus* may be filed in the Supreme Court.

Since AFPMBAI does not seek the performance by respondent RTC of some clearly defined ministerial duty, the Court agrees that the remedy of *mandamus* seems inappropriate in this case. Still the action is saved by the fact that it is also one for prohibition. AFPMBAI seeks to prevent the Marikina City RTC from hearing and adjudicating in excess of its jurisdiction Solid Homes' seriously flawed petition for relief from judgment. Prohibition is a correct remedy.

On the matter of the petition's supposed lack of affidavit of service as well as an explanation regarding petitioner's resort to service by registered mail, the record of the case shows that such affidavit and explanation are on page 42-A of the petition filed with the Court.