

FIRST DIVISION

[G.R. No. 165338, November 28, 2011]

MAKILITO B. MAHINAY, PETITIONER, VS. HON. IRENEO LEE GAKO, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 5, CEBU CITY AND JOCELYN B. SORENSEN, RESPONDENTS.

[G.R. NO. 179375]

JOCELYN B. SORENSEN, PETITIONER, VS. MAKILITO B. MAHINAY, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

These consolidated petitions pertain to a legal tug-of-war between persons trying to wrest possession of a coveted Torrens certificate of title, and its collateral effect to the judge who heard their case.

In G.R. No. 165338, Makilito B. Mahinay (Mahinay), thru a petition for *certiorari*^[1] directly filed with this Court, seeks to nullify the December 12, 2003 Resolution^[2] of the Regional Trial Court (RTC), Branch 5, Cebu City in Civil Case No. CEB-16335. The questioned RTC Resolution denied Mahinay's motion to compel Jocelyn B. Sorensen (Sorensen) to produce and turn over to him the owner's copy of Transfer Certificate of Title (TCT) No. 117531.^[3] In the same petition, Mahinay also charges respondent Judge Ireneo Lee Gako, Jr. (Judge Gako) with gross ignorance of the law, abdication of judicial duty, and failure to resolve a motion within the period prescribed by law.

Mahinay likewise assails the July 20, 2004 Order^[4] of the RTC denying his Motion for Reconsideration.^[5]

In G.R. No. 179375, Sorensen on the other hand seeks to reverse and set aside the April 24, 2007 Resolution^[6] of the Court of Appeals (CA) which dismissed her Petition for *Certiorari*^[7] in CA-G.R. CEB-SP No. 02193. Sorensen filed said certiorari petition after Judge Gako volte faced and issued an Order^[8] dated September 1, 2006 ordering her to surrender to Mahinay TCT No. 117531.

Sorensen likewise challenges the August 3, 2007 Resolution^[9] of the CA denying her Motion for Reconsideration.^[10]

Factual Antecedents

Constantina H. Sanchez, Josefina H. Lopez and Susan Honoridez are the registered owners (the owners) of a 406-square meter parcel of land known as Lot 5 located in Cebu City and covered by TCT No. 117531. On July 25, 1994, Mahinay filed a complaint^[11] for specific performance (docketed as Civil Case No. CEB-16335) against the owners and one Felimon Suarez (Suarez), to compel them to convey Lot 5 to him.

In said complaint, Mahinay alleged that in an earlier case^[12] he filed against the owners, the parties therein arrived at a Compromise Agreement wherein the owners gave him preferential right to buy a 200-square meter portion of Lot 5 on condition that he will withdraw said case. On February 8, 1993, the trial court thus issued a Judgment^[13] based on said Compromise Agreement.

On November 9, 1993, however, the owners sold the entire Lot 5 to Suarez for P300,000.00 without first offering the same to Mahinay. According to Mahinay, said transaction violated his preferential right to buy as he was willing and capable of buying the property. To bolster his claim, Mahinay attached to his second complaint the February 8, 1993 Judgment in the earlier case and a notarized Deed of Absolute Sale^[14] dated November 9, 1993 between the owners and Suarez.

During the pendency of Civil Case No. CEB-16335, Mahinay filed an Ex-Parte Manifestation and Motion^[15] informing the RTC that he caused the annotation of an adverse claim and then a Notice of *Lis Pendens*^[16] on TCT No. 117531 on August 17, 1994.

In traversing Mahinay's allegations, the owners asserted that they did not violate Mahinay's preferential right to buy as the transaction between them and Suarez was actually an equitable mortgage, and not a sale. In support of their defense of equitable mortgage, the owners averred that they remained the occupants and registered owners of Lot 5 and that TCT No. 117531 has always been in their possession. With regard to the execution of the alleged Deed of Absolute Sale, the owners explained that Suarez merely imposed the same as one of the conditions before granting the loan application. To prove their theory of defense, the owners submitted an Acknowledgement Receipt^[17] dated September 1, 1994 wherein Suarez declared that no sale between him and the owners actually pushed thru and a letter^[18] dated September 20, 1994 wherein the owners asked the Bureau of Internal Revenue for the refund of the capital gains and documentary stamp taxes they earlier paid.

Mahinay riposted, postulating that the Deed of Absolute Sale he attached to his Complaint sufficiently confutes the owners' defense of equitable mortgage. Besides, the owners and Suarez failed to deny under oath the authenticity and due execution of said Deed of Absolute Sale. ^[19]

On June 7, 1996, the RTC rendered a Decision^[20] debunking the owners' theory of equitable mortgage. It held that the notarized documents Mahinay presented, particularly the Deed of Absolute Sale, outweigh the owners' evidence consisting of private documents. Its dispositive portion reads:

WHEREFORE, this [C]ourt declares [Mahinay] as being entitled to redeem Lot No. 5 from defendant Felimon Suarez.

Defendant Felimon Suarez, his heirs, successors and assigns are hereby directed to execute the Deed of Conveyance, such papers and documents necessary for the transfer of the title of the said lot to [Mahinay] upon the deposit before this Court of the same consideration as stated in the Deed of Absolute Sale of the same lot between defendant Suarez and the other defendants.

No pronouncement as to costs.

SO ORDERED.^[21]

The owners and Suarez moved for reconsideration.^[22] On November 22, 1996, however, the RTC denied the same.^[23]

Unhappy, they appealed to the CA.^[24] Finding no reversible error therefrom, the CA affirmed the ruling of the RTC in a Decision^[25] dated December 29, 2000, which became final and executory on February 8, 2001.^[26]

About a year later, Mahinay and Suarez filed a Joint Manifestation^[27] informing the RTC that in compliance with its Decision, Suarez executed a Deed of Conveyance^[28] in favor of Mahinay, who, in turn, deposited with the RTC the amount of P300,000.00.^[29]

Thereafter, to pave the way for the complete implementation of the RTC's final Decision and have Lot 5 registered in his name, Mahinay filed on February 7, 2002 an Omnibus Motion^[30] seeking to compel the owners to vacate the property and turn over to him the owner's copy of TCT No. 117531. On March 12, 2002, the RTC, then already presided by Judge Gako, issued a Resolution^[31] granting Mahinay's motion. Thus:

WHEREFORE, in view of the foregoing, defendants Susan Honoridez, Constantina Sanchez and Josefina Lopez are directed to turn over the Owner's Duplicate Copy of the Certificate of Title of Lot 5 to [Mahinay], and to vacate the premises thereof in favor of the latter within thirty (30) days from receipt of this resolution.^[32]

Pursuant to said Resolution, the branch sheriff placed Mahinay in actual and physical possession of the entire Lot 5. However, TCT No. 117531 could not be surrendered to him as the same was already in possession of Sorensen by virtue of a Real Estate Mortgage executed by the owners subsequent to the filing of Mahinay's complaint.^[33]

Whereupon, Mahinay filed a Motion to Issue an Order Directing Sorensen to Turn Over TCT No. 117531^[34] to him. This drew Sorensen's Opposition,^[35] to which

Mahinay tendered his Reply.^[36]

On December 12, 2003, Judge Gako issued the assailed Resolution^[37] in G.R. No. 165338 denying Mahinay's motion, the pertinent portions of which read:

The court indeed believes that a mortgage lien is superior to a Notice of Lis Pendens pursuant to Article 2126 of the Civil Code, which provides that the mortgage directly and immediately subjects the property upon which it is imposed to the fulfilment of the obligation for whose security it was constituted. Article 2129 also provides that the creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said person possesses. In short, not even a sale or transfer of the mortgaged property can affect or release the mortgage because the purchasers are necessarily bound to acknowledge and respect the encumbrance of a recorded real estate mortgage, whether the sale or transfer to them be with or without the consent of the mortgagee.

WHEREFORE, in view of the foregoing, [Mahinay's] Motion to Direct Jocelyn B. Sorensen to turn over Transfer Certificate of Title No. 117531 to the sheriff is hereby denied.

On January 12, 2004, Mahinay filed a Motion for Reconsideration^[38] of the December 12, 2003 Resolution followed by a Supplemental Arguments in Support of the Motion for Reconsideration.^[39] Sorensen opposed^[40] the motion and to which opposition, on January 20, 2004, Mahinay replied.^[41]

Raring to end his decade long legal battle, Mahinay filed on April 19, 2004 an *Ex-parte* Motion for Early Resolution.^[42] A month later, Mahinay filed a Second *Ex-Parte* Motion for Early Resolution,^[43] furnishing the Court Administrator a copy thereof with express reservation of making the same as his formal administrative complaint in the future.

On July 20, 2004, what seemed to be an interminable wait for Mahinay finally ended, albeit with unwanted result on his part – Judge Gako came up with a one-page Order^[44] denying his Motion for Reconsideration.

Aggrieved yet still refusing to concede defeat, Mahinay directly went to this Court on October 8, 2004 by filing a petition for certiorari under Rule 65 of the Rules of Court against Sorensen and Judge Gako. He raises the following matters for consideration of this Court:

I.

RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING THE RESOLUTION AND ORDER DATED DECEMBER 12, 2003 AND JULY 20, 2004 (ANNEXES A AND B RESPECTIVELY), WHEREBY, ASIDE FROM REFUSING TO

PERFORM A MINISTERIAL DUTY TO IMPLEMENT THE FINAL AND EXECUTORY DECISION IN CEB-16335, HE AMENDED THE SAME AND MADE ERRONEOUS CONCLUSIONS OF LAW, INDICATIVE OF GROSS IGNORANCE OF THE LAW CHARACTERIZED WITH DISHONESTY, FRAUD AND BAD FAITH.

II.

RESPONDENT JUDGE IS GUILTY OF VIOLATING THE CONSTITUTIONAL PROVISION REQUIRING JUDGES TO DECIDE PENDING INCIDENTS WITHIN NINETY (90) DAYS FROM DATE OF SUBMISSION.

III.

THAT PETITIONER HAS NO APPEAL [OR] OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY AGAINST THE QUESTIONED RESOLUTION AND ORDER OF RESPONDENT COURT SOUGHT TO BE NULLIFIED IN THIS PETITION.^[45]

During the pendency of G.R. No. 165338, or on August 29, 2006, Mahinay filed with the RTC a Reiteratory Motion to Compel Jocelyn "Joy" B. Sorensen to Surrender Owner's Duplicate Copy of TCT No. 117531.^[46] In persuading Judge Gako to reconsider his earlier position, Mahinay alleged that in a related case^[47] filed by the owners which eventually reached the Supreme Court and docketed as G.R. No. 153762,^[48] this Court held that the Decision in Civil Case No. CEB-16335 had long become final and executory, thereby erasing any doubt that the transaction between the owners and Suarez was indeed a contract of sale. For Mahinay, this Court's ruling in G.R. No. 153762 is a supervening event which would justify Judge Gako to reconsider his earlier position on the matter of directing Sorensen to hand over to him the owner's copy of TCT No. 117531. He also suggested that if Judge Gako would grant his motion, the administrative charge of gross ignorance of the law against the good judge would become moot.

Apparently persuaded by Mahinay's formulations, Judge Gako granted his Reiteratory Motion on September 1, 2006.^[49]

It thus became Sorensen's turn to file a Motion for Reconsideration.^[50] She contended that Mahinay violated the rule against forum shopping as the relief sought in aforesaid Reiteratory Motion is the same relief prayed for in G. R. No. 165338. She also pointed out that Judge Gako gravely abused his discretion in granting said motion for he effectively pre-empted the action of the Supreme Court in G.R. No. 165338. With regard to the Decision of this Court in G.R. No. 153762, Sorensen argued that the same is not conclusive as to whether she cannot remain in possession of the disputed TCT.

After Mahinay filed his Opposition,^[51] Judge Gako issued an Order^[52] dated September 18, 2006 denying Sorensen's Motion for Reconsideration.

Sorensen thus filed with the CA a petition for *certiorari*^[53] assailing Judge Gako's