

## SECOND DIVISION

[ G.R. No. 190448, July 26, 2010 ]

**FEDERICO D. TOMAS, PETITIONER, VS. ANN G. SANTOS,  
RESPONDENT.**

### R E S O L U T I O N

**NACHURA, J.:**

This is a petition<sup>[1]</sup> for review on *certiorari* under Rule 45 of the Rules of Court assailing the Resolutions of the Court of Appeals dated July 29, 2009 and November 26, 2009, respectively, in CA-G.R. SP No. 109646.

The case arose from a complaint<sup>[2]</sup> for reconveyance of title, declaration of nullity of assignment and deed of sale, breach of contract, and damages filed by respondent Ann G. Santos (Santos) against petitioners Federico D. Tomas (Tomas), Del-Nacia Corporation (Del-Nacia) and Lydia L. Geraldez (Geraldez), then President of Del-Nacia. Subject of the complaint was a real property of 367 square meters, located in Del Nacia Ville, Sauyo Road, Novaliches, Quezon City. At the time of the filing of the complaint, the property was covered by Transfer Certificate of Title (TCT) No. 81965 in the name of Tomas.

Del Nacia and Tomas<sup>[3]</sup> filed their respective answers. However, upon motion<sup>[4]</sup> of Santos, the Regional Trial Court (RTC) of Quezon City, in its Order<sup>[5]</sup> dated August 29, 1997, declared Tomas in default and dismissed his counterclaim on the ground that his answer lacked a certification of non-forum shopping, proof of service, and an explanation why personal service was not resorted to in furnishing a copy of his answer to Santos.

Tomas filed a motion<sup>[6]</sup> to lift order of default and to admit amended answer with counterclaim.<sup>[7]</sup> The RTC denied this motion in its Order<sup>[8]</sup> dated November 6, 1997.

Tomas filed a motion for reconsideration<sup>[9]</sup> of the November 6, 1997 Order. However, the RTC denied the same.<sup>[10]</sup>

Trial ensued, with Tomas testifying as a witness. Thereafter, the RTC rendered its Decision<sup>[11]</sup> dated June 23, 2009 in favor of Santos.

Tomas received a copy of the Decision on July 9, 2009. Aggrieved, Tomas filed a Notice of Appeal<sup>[12]</sup> and paid the necessary fee<sup>[13]</sup> on July 21, 2009. Tomas furnished copies of his Notice of Appeal to Del-Nacia and Santos. Their respective counsel received them accordingly.<sup>[14]</sup>

On July 22, 2009, Tomas filed his appeal with the Court of Appeals which he denominated "Petition for Review."<sup>[15]</sup> It was entitled *Federico D. Tomas v. The Honorable Regional Trial Court - National Capital Judicial Region - Branch 223, Quezon City and Ann G. Santos*, and was docketed as CA-G.R. SP No. 109646.

In a Resolution<sup>[16]</sup> dated July 29, 2009, the Court of Appeals dismissed the "Petition for Review" on the following grounds: (1) it was an inappropriate remedy because it should have been merely an ordinary appeal; (2) there was no certificate of non-forum shopping appended to the pleading; and (3) it was not accompanied by copies of relevant pleadings and other material portions of the records to support its allegations.

Tomas moved to reconsider this July 29, 2009 Resolution.<sup>[17]</sup> In his motion, Tomas argued that the Court of Appeals should not have dismissed his appeal merely on technical grounds, more particularly because he timely filed his Notice of Appeal, paid the corresponding fee, and furnished copies thereof to Del-Nacia and Santos. He also posited that he did not attach the pleadings cited by the Court of Appeals to the "Petition for Review," considering that the entire records of the case would nevertheless be transmitted to it. He prayed that the Court of Appeals pass upon the merits of his case, and he also appended to the motion the required certification of non-forum shopping and the documents pertinent to the controversy.

In the Resolution<sup>[18]</sup> dated November 26, 2009, the Court of Appeals denied Tomas' motion for reconsideration, disposing as follows -

While he has rectified two of the noted defects, petitioner still insists on the correctness of the instant recourse. We have already exhaustively discussed why the present recourse is erroneous and why it should be summarily dismissed. We no longer find any reason to go into great detail in discussing the matter a second time around.<sup>[19]</sup>

Hence, this petition anchored both on procedural and substantial grounds, *i.e.* assailing the outright dismissal of the appeal by the Court of Appeals, as well as the judgment of the RTC on the merits of the case.

It bears mentioning that Tomas, except for his testimony before the RTC as a witness of Del-Nacia, was not able to present his own defense in full, considering that the RTC declared him in default and dismissed his counterclaim by reason of procedural infirmities.

With the RTC deciding against him, Tomas would necessarily resort to an appeal to the Court of Appeals. Accordingly, Tomas filed his Notice of Appeal and correspondingly paid the required fees on July 21, 2009, or 12 days from July 9, 2009, the date of his receipt of a copy of the RTC Decision. The following day, July 22, 2009, Tomas filed his appellate pleading with the Court of Appeals, but it was mistakenly entitled "Petition for Review." Because of this improper title, his appeal was docketed not as an ordinary appeal but as a special civil action for *certiorari* docketed as CA-G.R. SP No. 109646. However, a perusal of the allegations in his "Petition for Review" would readily show that what was filed was actually an ordinary