

THIRD DIVISION

[G.R. NO. 160380, July 30, 2009]

**SPOUSES EDUARDO AND LETICIA MONTAÑO, PETITIONERS, VS.
ROSALINA FRANCISCO, THE CITY GOVERNMENT OF ILOILO,
ROMEO V. MANIKAN, CITY TREASURER OF ILOILO CITY, AND
ERLINDA C. ZARANDIN, HEAD OF THE TREASURER'S
ENFORCEMENT GROUP, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* of the Decision^[1] dated April 24, 2003 of the Court of Appeals in CA-G.R. CV No. 71004, and its Resolution dated August 20, 2003, denying petitioners' motion for reconsideration. The Court of Appeals Decision held that the tax delinquency proceedings involving the parcel of land covered by Transfer Certificate of Title (TCT) No. T-41681 is legal and with force and effect. It reversed and set aside the Decision^[2] dated January 12, 2001 of the Regional Trial Court (RTC) of Iloilo City, Branch 23 (trial court).

The facts^[3] are as follows:

Petitioners spouses Eduardo and Leticia Montaño established that on April 13, 1977, they executed a Deed of Conditional Sale^[4] with the Government Service Insurance System (GSIS) covering a parcel of land situated at Block 2, Lot 6, Maharlika Homes, Jaro, Iloilo City, together with the house and improvements thereon. The lot was covered by TCT No. T-41681. The Montañons started paying the amortization in January 1979, and occupied the house and lot in 1980. However, in the summer of 1994, one Atty. Salvador Paja I went to their house and claimed that the lot was already owned by respondent Rosalina Francisco.

Leticia Montaño made inquiries regarding the alleged sale of the lot. She went to the Register of Deeds and discovered an annotation at the back of TCT No. T-41681,^[5] under Entry No. 170334 dated July 17, 1991, stating that a Certificate of Sale of Delinquent Real Property dated June 28, 1991 was executed by the City Treasurer's Office in favor of Rosalina Francisco covering the parcel of land for the sum of P2,225.19 representing taxes, penalties and cost of sale pursuant to the provision of Section 76 of Presidential Decree (P.D.) No. 464.^[6] It also appeared at the back of the same title, under Entry No. 201610 dated July 16, 1993, that Judge Quirico Defensor of the RTC of Iloilo City, Branch 36 issued an Order^[7] dated April 29, 1993, directing the Register of Deeds of Iloilo City to issue a new owner's duplicate copy of the said certificate of title in the name of GSIS and declaring the lost copy as null and void.

On June 13, 1994, Leticia Montaño requested the Register of Deeds of Iloilo City to

annotate a Notice of Adverse Claim on TCT No. T-41681 to protect her right and interest in the subject property by virtue of the Deed of Conditional Sale executed by GSIS in her favor.

Leticia Montaña also went to the Office of the City Treasurer where she learned that respondent Francisco purchased the subject property in a public auction sale of delinquent real property conducted by public respondents on June 27, 1991. Petitioners averred that they were neither given any notice of tax delinquency nor informed of the schedule of the public auction sale. They were also not furnished a copy of the sale certificate. Moreover, they did not receive any notice of their right to redeem the subject property.

On July 11, 1994, the Montañas filed before the RTC of Iloilo City, Branch 23, an action for declaration of nullity of sale and damages against Rosalina Francisco, the City Government of Iloilo, the City Treasurer and the Head of the Treasurer's Enforcement Group. They caused a Notice of *Lis Pendens*^[8] to be recorded, and paid the tax due by consignment,^[9] pursuant to Section 267 of the Local Government Code of 1991.^[10]

Benson Chin of the City Treasurer's Office, in compliance with the subpoena and subpoena *duces tecum* issued by the trial court, brought the record folder of the subject property in the name of Baldomero Dagdag. The property's records presented before the trial court consisted of the Notice of Sale of Delinquent Real Property;^[11] the Certificate of Posting;^[12] the Certification on the conduct of auction sale by crier held on June 10, 1991 at the terminal market, on June 11, 1991 at the La Paz Public Market and on June 14, 1991 at the Central Market;^[13] proof of service;^[14] the Certificate of Sale of Delinquent Property to the City;^[15] the Report of Sale of Delinquent Property^[16] dated July 2, 1991; the Notice of Right to Redeem^[17] addressed to GSIS c/o Baldomero Dagdag dated July 12, 1991; and the Final Deed of Sale^[18] dated July 17, 1992.

Public respondents City Treasurer of Iloilo City Romeo Manikan and Head of the Treasurer's Enforcement Group Erlinda Zarandin filed their Answer with Counterclaim,^[19] alleging that petitioners were not notified because they had no right to be notified since the property was owned by the GSIS under the care of Baldomero Dagdag, who were notified in accordance with law. Moreover, petitioners had no cause of action insofar as they were concerned, and that they had no personality to sue.

The evidence for private respondent Rosalina Francisco showed that Atty. Salvador Paja I, in whose favor respondent Francisco executed a Special Power of Attorney,^[20] bought at a public auction sale held on June 27, 1991, a parcel of land known as Lot 6, Block 2, Phase 2144-B, located in *Barangay* Balabago, Jaro, Iloilo City, registered in the name of the GSIS, and covered by TCT No. T-41681.^[21] The Certificate of Sale of Delinquent Real Property executed by the City Treasurer's Office in favor of respondent Francisco was annotated at the back of TCT No. T-41681 under Entry No. 170334.^[22] Since no redemption had been made within the one year period, a Final Deed of Sale was executed.

On November 17, 1992, respondent Francisco, represented by Atty. Paja, filed a petition for the entry of new Certificate of Title in her favor with the RTC of Iloilo City, Branch 36. She sought the issuance of a new Owner's Duplicate Copy of Certificate of Title in the name of GSIS c/o Baldomero Dagdag to effect registration of the Final Deed of Sale. Absent any opposition, the RTC issued an Order^[23] dated April 29, 1993 directing the Register of Deeds of Iloilo City "to issue a new owner's duplicate copy of Transfer Certificate of Title No. T-41681 in the name of GSIS c/o Baldomero Dagdag" and declaring the lost copy as null and void. The dispositive portion of the Order was annotated at the back of the Certificate of Title under Entry No. 201610.^[24]

The main issue sought to be resolved was whether or not the tax delinquency proceedings made on the subject lot was regular and legal.

On January 12, 2001, the trial court rendered a Decision, holding that the failure of public respondent Iloilo City Treasurer to comply with the requirements as to the publication and notice of auction sale invalidated the auction sale. The dispositive portion of the Decision reads:

WHEREFORE, in the light of the facts obtaining and the jurisprudence aforecited, judgment is hereby rendered in favor of the plaintiffs and against all the defendants, hereby:

- 1) Declaring the tax delinquency proceedings (the auction sale) on the lot subject of this case as illegal and without force and effect;
- 2) No costs.

SO ORDERED.^[25]

Respondent Francisco appealed the trial court's Decision to the Court of Appeals. In a Decision dated April 24, 2003, the appellate court reversed the decision of the trial court, the dispositive portion of which states:

WHEREFORE, premises considered, the Decision dated January 12, 2001 of the Regional Trial Court, Branch 23, Iloilo City in Civil Case No. 21871 is hereby REVERSED and SET ASIDE.

Accordingly, the tax delinquency proceedings involving the parcel of land (Lot No. 6) covered by TCT No. 41681 is declared legal and with force and effect.

Defendant-appellant's claim for damages is denied for lack of merit.

SO ORDERED.^[26]

The Court of Appeals held that the GSIS, as the registered owner of the property, is the taxpayer entitled to the notice of tax delinquency. It found that GSIS was not

deprived of its property without due process and that notice was regularly served. Under a contract to sell, the vendor retains the ownership of the property until after the same is fully paid by the vendee. Hence, when public respondents caused the service of the notice of sale to Baldomero Dagdag of the GSIS, the interest of the taxpayer was deemed to have been protected and the notice requirement was complied with.

As regards the alleged defect in publication, the Court of Appeals noted that per affidavit of the Editor-in-Chief of the Visayan Tribune, the notice was published thrice, as required by law. Citing *Talusan v. Tayag*,^[27] the appellate court held that granting *arguendo* that the notice was published only twice instead of thrice, as required by law, the same is no longer material to the case since the interest of the taxpayer was protected by the service of personal notice to the registered owner of the property.

Further, the Court of Appeals pointed out that in *GSIS v. City Assessor of Iloilo City*,^[28] it had already upheld the validity of the assessment of the real property taxes upon GSIS and the auction sale proceedings, as it sustained the finding of the lower courts that notices were sent to the GSIS and the beneficial owners of the properties in question, which includes the subject lot.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution^[29] dated August 20, 2003.

Hence, this petition.

The main issue raised is whether or not the tax delinquency proceedings conducted on the subject parcel of land situated at Block 2, Lot 6, Alta Tierra Village, Jaro, Iloilo City^[30] was regular and legal.

Petitioners contend that the Court of Appeals erred in holding that the tax delinquency proceedings was legal and with force and effect, since the requirements regarding the publication and notice of an auction sale under Section 73 of P.D. No. 464 were not complied with.

The petition is without merit.

The pertinent provision of law in this case is Section 73 of P.D. No. 464, thus:

SEC. 73. *Advertisement of sale of real property at public auction.* -After the expiration of the year for which the tax is due, the provincial or city treasurer shall advertise the sale at public auction of the entire delinquent real property, except real property mentioned in subsection (a) of Section forty hereof, to satisfy all the taxes and penalties due and the costs of sale. Such advertisement shall be made by posting a notice for three consecutive weeks at the main entrance of the provincial building and of all municipal buildings in the province, or at the main entrance of the city or municipal hall in the case of cities, and in a public and conspicuous place in the barrio or district wherein the property is situated, in English, Spanish and the local dialect commonly used, and by