522 Phil. 313

SECOND DIVISION

[G.R. NO. 147912, April 26, 2006]

RUSSEL, RIZZA, KATHERINE, LYRA, RUTH, ALL SURNAMED DE LOS SANTOS, REPRESENTED BY THEIR FATHER LEONARDO DE LOS SANTOS , PETITIONERS, CORONA, VS. COURT OF APPEALS, PASIG REALTY AND DEVELOPMENT CORPORATION AND SPOUSES JOSE RAMIREZ SAN BUENAVENTURA AND JOSEPHINE REDIGA SAN BUENAVENTURA, RESPONDENTS.

D E C I S I O N

CORONA, J.:

On May 18, 1987, petitioners[1] entered into a contract to sell with private respondent Pasig Realty and Development Corporation for the purchase of a parcel of land in Phase I-D of Parkwood Greens Executive Village, Maybunga, Pasig.[2] Out of the total purchase price of P189,810, a down payment of P45,506.40 was required, with the balance of P144,103.60 payable over 60 months with interest at P3,898.48 per month beginning June 18, 1987.

Upon execution of the contract, petitioners paid the down payment. On February 24, 1988, they issued ten postdated checks in the amount of P5,000 each in favor of private respondent corporation. Only one of the checks was honored while the others were dishonored by reason of insufficiency of funds.

On May 27, 1988, private respondent corporation demanded the settlement of all unpaid amortizations amounting to P46,781.76 covering the period June 18, 1987 to May 18, 1988. On June 6, 1988, petitioners paid P10,000 in cash. No further payment was made.

On January 18, 1989, private respondent corporation notified petitioners that it was exercising its option to cancel the contract to sell with forfeiture of payments made, effective 30 days from notice,[3] in accordance to Section 4 of RA 6552[4] and paragraph 6 of the contract to sell.

On May 3, 1991, private respondent corporation requested petitioners to vacate the property to enable the new buyer to take possession of the same. Instead, petitioners questioned the cancellation of the contract alleging that they stopped payment due to private respondent corporation's failure to develop the subdivision.

Subsequently, they filed an action for specific performance and damages with the Housing and Land Use Regulatory Board (HLURB).[5] Acting through arbiter Abraham Vermudez, the HLURB dismissed the complaint.[6]

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

(a) Dismissing the instant complaint for lack of cause of action;
(b) Declaring the cancellation of the Contract to Sell by respondent corporation, and the consequent forfeiture of the payments made thereunder by the complainants, valid, legal and binding between the parties, the same being in accordance with law.[7]

In a petition for review to the HLURB Board of Commissioners, the arbiter's decision was affirmed in toto.[8]

On appeal, the decision of the HLURB Board of Commissioners was affirmed by the Office of the President (OP) on October 1, 1997.[9] On October 8, 1997, a certified copy of the decision was sent to the given address of petitioners' then counsel of record, Atty. Benedicto Gonzales; this was returned to sender with the notation that the addressee was "no longer connected in (that) office."[10]

While the case was pending adjudication, private respondent corporation sold the contested property to the private respondent spouses Jose Ramirez San Buenaventura and Josephine Rediga San Buenaventura. On January 30, 1995, TCT no. PT-97285 was issued to them.

On March 6, 1998, the October 1, 1997 OP decision became final and executory.

On March 30, 1998, petitioners, through their new counsel, Atty. Cesar Turiano, filed a motion to set aside the March 6, 1998 order and/or petition for relief from judgment.[11] They argued that the order of finality should be lifted and set aside since there was no proper service of the October 1, 1997 OP decision.

The OP denied the motion and affirmed the order of finality in a resolution dated March 27, 2000.[12]

> As shown by the records of this case, proper service of this Office's decision dated October 1, 1997 upon petitioners' counsel of record, Atty. Gonzales, may be presumed for his failure to give proper notice of his change of address. This is binding upon petitioners. Thus, it would be a mere superfluity to again serve notice of said decision on petitioners themselves, considering that they are already bound by their counsel's negligence.
>
> Thus, the said decision has already become final and executory. xxx In Antonio vs. Court of Appeals, the Court categorically stated that the requirements of conclusive proof of the registry notice presupposes that the notice is sent to the correct address as indicated in the records of the court. It does not apply where, as in the case at bar, the notice was sent to the lawyer's given address but did not reach him because he had moved therefrom without informing the court of his new location. The service at the old address should be considered valid. xxx[13]

This resolution was received on April 11, 2000 by Anarose Delfin, the secretary of Atty. Turiano. However, according to petitioners, Delfin misplaced it and a copy thereof was secured by them only on July 14, 2000.

On September 8, 2000, petitioners filed a petition for certiorari in the Court of Appeals[14] imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the OP in rendering the March 27, 2000 resolution. The petition was dismissed on October 6, 2000.[15] The motion for reconsideration was denied on April 20, 2001.[16]

Hence, this recourse.

Before anything else, petitioners pursued the wrong mode of appeal in filing the present petition for certiorari under Rule 65 of the Rules of Court. As a rule, the remedy to obtain reversal or modification of a judgment is appeal. This is so even if the error, or one of the errors, ascribed to the court rendering the judgment is its grave abuse of discretion or lack of jurisdiction or the exercise of power in excess thereof.[17]

Since the allegations and the prayer in the present petition seek to reverse the October 6, 2000 and April 20, 2001 resolutions of the Court of Appeals, the proper remedy should have been a petition for review under Rule 45 of the Rules of Court. Certiorari is resorted to only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[18]

However, we shall treat this action as a petition for review under Rule 45 considering that it was filed within 15 days from receipt of the denial of the motion for reconsideration.[19]

Petitioner would have us reverse the resolutions of the Court of Appeals denying their petition for certiorari. After a careful review of the records, we find no compelling reason to do so.

First, it is not disputed that the March 27, 2000 OP resolution was received by petitioners' counsel[20] on April 11, 2000. They had fifteen days therefrom to file either a motion for reconsideration or an appeal pursuant to Rule 43 of the Rules of Court. Petitioners' excuse that their counsel was not able to furnish them with the resolution because the latter's secretary misplaced it is unacceptable. They are bound by the negligence or mistake of their counsel. For all intents and purposes, the resolution was properly served.

Petitioners' resort to a petition for certiorari was to make up for the loss of their right to file an ordinary appeal. It was a "damage-control" exercise. A perusal of the petition shows that it was actually an appeal of the October 1, 1997 and March 27, 2000 resolutions of the OP.

The availability to petitioners of the remedy of a petition for review under Rule 43 of the Rules of Court to appeal the OP resolution dated March 27, 2000 effectively foreclosed their right to resort to certiorari. This special civil action is a limited form of review and cannot be used as a substitute for the lost or lapsed remedy of appeal. We reiterate: this remedy lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. [21]