

SECOND DIVISION

[G.R. NO. 131741, July 31, 2006]

SPS. BERNARDO V. ATIENZA AND EUFROCINA M. ATIENZA, PETITIONERS, VS. THE COURT OF APPEALS, GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), EX-OFFICIO SHERIFF OF MAKATI, THE REGISTERS OF DEEDS OF MAKATI & MALABON, AND SPS. JEAN AND MELANIO N. DE CAMPO, RESPONDENTS. JULY 31, 2006

R E S O L U T I O N

AZCUNA, J.:

This is a petition for review on certiorari questioning the decision and resolution of the Court of Appeals^[1] which denied a petition for annulment of the orders of the Regional Trial Court of Makati, Branch 132^[2] which in turn dismissed a petition for annulment of sale.

The facts as narrated by the Court of Appeals are as follows:

Sometime in 1963, petitioners obtained a housing loan from respondent GSIS in the amount of P18,000.00. As security, petitioners executed a real estate mortgage over two (2) parcels of land situated in Makati and Malabon and covered by TCT Nos. 102885 and 108406. Apparently, the loan obligation was not paid, so in 1984, respondent GSIS notified petitioners of the foreclosure sale of their real estate mortgage. To forestall the threatened foreclosure, petitioners paid respondent GSIS the sum P185,000.00. Despite the said payments, respondent GSIS proceeded with the auction sale, with the latter as highest bidder. The certificates of title in the name of petitioners were subsequently cancelled and new ones issued in the name of respondent GSIS.

Petitioners negotiated for the repurchase of the mortgaged properties at the redemption price but respondent GSIS denied the offer. Hence, on 20 September 1987, petitioner Eufrocina filed a complaint for injunction against respondent GSIS before the RTC of Manila, Branch 30 which was docketed as Civil Case No. 87-42116 praying that respondent GSIS be restrained from selling the said mortgaged properties. On 4 February 1992, a similar action was filed by petitioner Eufrocina against respondent GSIS before another branch (Br. 40) of the RTC of Manila which was docketed as Civil Case No. 92-60056. A similar complaint for injunction was later filed on 8 January 1993 against the same respondent before the RTC of Makati, Branch 61 which was docketed as 93-060.

The three (3) injunction suits were dismissed by the trial courts: Civil Case No. 87-42116 on the ground of improper venue; Civil Case No. 92-

60056 on the ground that a similar case was already filed for the same cause of action (referring to CC No. 87-42116) and Civil Case No. 93-060 on the ground of *res judicata*.

Petitioner appealed Civil Case No. 93-060 to this Court (CA G.R. No. 44937) but [the appeal] was subsequently withdrawn.

Thereafter, petitioners instituted this present complaint [CC No. 94-2342] for annulment of sale against herein respondent GSIS before respondent court.

On 12 October 1994, respondent GSIS moved to dismiss the complaint, alleging *inter alia*:

- I. The verification made by the plaintiffs pursuant to Administrative Order No. 04-94 of the Honorable Supreme Court admits of the filing of other actions involving the same issues raised in the present case.
- II. That there is another action pending between the same parties for the same cause.
- III. That the complaint failed to state a cause of action.

Petitioners opposed the motion asserting among others that the verification in the complaint did not admit the filing of other actions involving the same issues raised in the present case and that there is no other action pending between the same parties for the same cause.

The respondent court in its Order of 22 February 1995, granted the motion, the *fallo* of which reads:

For resolution is a Motion to Dismiss filed by defendant Government Service Insurance System (GSIS), thru counsel, on October 12, 1994, considered together with three (3) other motions related thereto.

One of the grounds posed by defendant GSIS is [a] violation of Administrative Circular No. 04-94 on Forum Shopping.

In their certification on Non-Forum Shopping embodied in the verification of the complaint, plaintiffs admitted having filed:

1. Civil Case No. 93-060 entitled "Eufrocina M. Atienza vs. Government Service Insurance System" at RTC-Branch 61, Makati, for injunction;
2. Civil Case No. 87-42116 entitled "Eufrocina Atienza vs. Government Service Insurance System (GSIS)" at RTC-Branch 30, Manila, for injunction; and
3. Civil Case No. 92-60056 entitled "Eufrocina Atienza vs. Government Service Insurance System" at RTC-Branch

40, Manila for injunction.

These cases involved the same essential facts and circumstances with the instant case. The filing of this case, therefore, the issues of which could have been properly raised in the three earlier cases, amply demonstrate plaintiffs' act of forum shopping.

IN VIEW THEREOF, this case is hereby dismissed.

The two other grounds asserted by defendant GSIS in its motion [are] considered moot and academic.

SO ORDERED. (pp.116-117, rollo).

Petitioners moved for reconsideration arguing that the present suit for annulment of sale [does] not involve the same cause of action as the three injunction cases filed before the Regional Trial Courts of Makati and Manila are only ancillary or preventive remedies to prevent respondent GSIS from taking over the possession of the subject properties, none of which could have resolved with finality the issue or validity of the auction sale and the subsequent issue of ownership of the mortgaged land.

On 19 June 1995, the Court denied the motion for reconsideration.

Petitioners questioned the respondent's aforementioned Orders before this Court (CA G.R. SP No. 38198) via a petition for certiorari which was denied by this Court on 23 April 1996 portions of which [denial] read:

The pleadings on file show that petitioners filed [a] motion for reconsideration of the order of dismissal and they received a copy of the order denying their motion for reconsideration on June 30, 1995. There is no showing that petitioners appealed from the Order dated February 22, 1995 which is the proper remedy. The order of dismissal cannot be assailed in this petition for certiorari which was received by this Court on August 22, 1995. By this time, appeal is too late to take, leaving the order to become final by operation of law. And this petition cannot be a good substitute for the appeal which petitioners failed to avail of.

WHEREFORE, the petition for certiorari is hereby DISMISSED.

SO ORDERED. (p. 345, rollo).

Petitioners went up to the Supreme Court (G.R. No 125268) thru a petition for review on certiorari. On 14 August 1996, the High Court denied the petition for failure to show that a reversible error had been committed by this court.

On 2 January 1997, petitioners filed this petition on the principal ground that the Order of 22 February 1995 was obtained by respondent GSIS thru fraud and misrepresentation which prevented them from presenting