493 Phil. 804

SECOND DIVISION

[G.R. NO. 143666, March 18, 2005]

SOLEDAD MENDOZA AND SPOUSES PHILIP AND MA. CARIDAD CASIÑO, PETITIONERS, VS. PURITA BAUTISTA, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals dated August 20, 1999 and June 2, 2000, respectively, in CA-G.R. CV No. 48061.

The factual background of the case is as follows:

On December 10, 1991, respondent Purita Bautista filed a complaint for annulment of sale and reconveyance against petitioners Soledad Mendoza and her husband, Peregil T. Raymundo,[3] and spouses Philip G. Casiño and Ma. Caridad Zara Casiño before the Regional Trial Court, Branch 164, of Pasig City, docketed as Civil Case No. 61606.[4] The Register of Deeds and the City Assessor, both of Mandaluyong City, in their official capacity, were also impleaded by respondent.

Respondent alleged that on June 28, 1990, the Raymundo spouses sold a fifty-square meter property situated in Brgy. Poblacion, Mandaluyong City, covered by Transfer Certificate of Title (TCT) No. 16559, to their co-petitioner Casiño spouses for P45,000.00 in violation of her right of first refusal under the Civil Code and the Land Reform Code.

On February 20, 1992, petitioner Casiño spouses filed a motion to dismiss on the ground of *res judicata* since a prior case (Civil Case No. 60953) with the same subject matter and cause of action was dismissed for non-suit.[5] In opposing the motion, respondent argued that the prior case was dismissed without prejudice.[6]

On March 2, 1992, the trial court held that the prior case was dismissed without prejudice and denied the motion to dismiss.[7]

On April 29, 1992, upon motion of the respondent,[8] the trial court declared petitioners in default for failure to file their responsive pleading.[9]

On May 18, 1992, petitioners filed a motion to lift the order of default[10] but the trial court denied it in its Order dated September 2, 1992.[11]

On September 23, 1992, petitioners filed a motion for reconsideration,[12] attaching therewith their Answer in Civil Case No. 60953. Then again, the trial court

denied the same in its Order dated October 22, 1992.[13]

On November 18, 1992, petitioners filed a petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 29471.[14] However, on July 19, 1993, the appellate court dismissed the petition for *certiorari* on the ground that the trial court did not commit grave abuse of discretion in denying petitioners' attempt to foist an answer in a dead case (Civil Case No. 60953) as an answer in a new case, beyond the reglementary period.[15]

Undaunted, the petitioners filed a petition for review on *certiorari* with this Court, docketed as G.R. No. 111034.[16] In a Resolution dated October 4, 1993, the Court denied the petition for non-compliance with procedural requirements, as well as lack of merit thereof.[17] No motion for reconsideration was filed by the petitioners and the decision became final and executory on November 5, 1993.[18] Accordingly, the case was remanded back to the trial court.

Upon proper motion,[19] which was granted by the trial court,[20] respondent presented her evidence ex parte before the Branch Clerk of Court,[21] the gist of which, as summarized in the Decision of the trial court dated June 29, 1994, is as follows:

> It may be gleaned from said Report that on May 5, 1995, plaintiff, through counsel, presented herself as the sole witness in her behalf.
>
> She testified that:
>
> She was the previous lessee of a house and lot owned by defendants-spouses Peregil T. Raymundo and Soledad Mendoza located at 81 F. Blumentritt Street, Mandaluyong, Metro Manila from the year 1967 continuously up to 1990;
>
> In June 1990, she learned that the said house and lot where it was built was bought by defendants-spouses Philip and Caridad Zara Casiño from the spouses Raymundo by virtue of a Deed of Sale dated June 28, 1990 in the amount of forty-five thousand pesos (P45,000.00) wherein Transfer Certificate of Title (TCT) No. 3618 was issued in the name of the buyers;
>
> The house and lot was not offered to her for sale before it was sold to the defendants-spouses Casiño.
>
> When she intimated to the defendants Raymundo her interest and desire to buy the house and lot, they refused and said that they were giving priority to and then sold said property to defendants-spouses Casiño;
>
> The said house was demolished on May 24, 1993 by defendant Casiño accompanied by some companions. She objected to such demolition but she could not stop them as they were many;
>
> Her personal properties valued at P30,000.00 inside the house were

> destroyed in the process of demolition as they were left behind because she was fearful of those who demolished the house;
>
> The complaint for ejectment over the subject house filed against her was dismissed by Judge Laqui and that there was an appeal but the defendants lost;
>
> Although she won in this case of ejectment, the house was still demolished as she was informed by the Casiños that she lost said case;
>
> She identified the present Complaint she filed which prayed that the title of said lot be cancelled and a new title be issued in her name as she has the money to pay for the subject lot as shown by the BPI Family Savings Account No. 0536234 in her name which contained a deposit of P51,414.33 as of September 25, 1992; and that
>
> She incurred about P50,000.00 as litigation expenses in pursuance of this case.[22]

Based on the foregoing, the trial court held that respondent substantiated the allegations in her complaint and declared Presidential Decree (P.D.) No. 1517, or the Urban Land Reform Law, as the source of her right of first refusal. It held that she was covered under said law, being a legitimate tenant who has resided on the land for more than ten years, citing *Joya vs. Court of Appeals*.[23] Thus, the trial court rendered a decision in her favor, the dispositive portion of which reads:

> ACCORDINGLY and as prayed for, the defendants-spouses Philip G. Casiño and Ma. Caridad Zara Casiño are hereby ordered to reconvey the subject property covered by TCT No. 3618 to and upon payment thereof by plaintiff Purita R. Bautista in the amount of P45,000.00 plus legal interest earned within thirty (30) days after this Decision has become final; and for all defendants to pay jointly and solidarily, the plaintiff twenty (20) percent of the acquisition cost of the house and lot for and as attorney's fees; as well as to pay the cost of suit.
>
> SO ORDERED.[24]

Petitioners appealed to the Court of Appeals insisting anew that the case is barred by *res judicata* as a prior case (Civil Case No. 60953) with the same subject matter and cause of action was dismissed for non-suit. Furthermore, they argued that there is no basis for the decision in respondent's favor. Lastly, petitioners asserted that the trial court acted contrary to the liberal interpretation of procedural laws in denying their motion for reconsideration and refusing to consider the answer appended thereto.[25]

On August 20, 1999, the Court of Appeals denied the petition and affirmed the decision of the trial court.[26] It held that the case is not barred by *res judicata* because the initial dismissal of the case for failure to appear at the pre-trial was without prejudice. Anent the favorable decision based on respondent's evidence, the appellate court held that being declared in default, petitioners were precluded from presenting their own evidence, leaving respondent's evidence as the sole basis for consideration and it just so happened that the trial court found respondent's

evidence as having substantiated her cause of action. With respect to the denial of the motion for reconsideration and refusal to consider the answer appended thereto, it held that said issue has long been decided by this Court.

On February 11, 2000, petitioners filed a motion for reconsideration arguing that the decision is contrary to P.D. No. 1517.[27] They alleged that respondent did not allege in her complaint, and neither has she proven by her evidence that the lot involved is within the urban zone proclaimed as urban land reform area so that she, as an actual occupant thereof, might be the rightful beneficiary of the right of first refusal, invoking *Parañaque Kings Enterprises, Inc. vs. Court of Appeals*[28] and *Lagmay vs. Court of Appeals*.[29] Petitioners subsequently filed a supplemental motion for reconsideration citing *Solanda Enterprises, Inc. vs. Court of Appeals*[30] to bolster their position.[31] Respondent opposed petitioners' motion for reconsideration.[32]

In a Resolution dated June 2, 2000, the Court of Appeals denied petitioners' motion for reconsideration. It held that petitioners' invocation of P.D. No. 1517[33] is improper at that stage since said issue was neither brought up nor discussed by petitioners in their appeal brief. It noted that the discussions in the appeal brief were confined to allegedly erroneous procedural processes which were already passed upon with finality by no less than this Court. To support its decision, it relied on the sound procedural precept that unassigned errors or questions not specifically raised may not be considered on appeal.[34]

Hence, the present petition for review on *certiorari* anchored on a sole assigned error, to wit:

> THE COURT OF APPEALS PATENTLY AND SERIOUSLY ERRED IN NOT REVERSING THE DECISION OF THE TRIAL COURT GRANTING THE RESPONDENT THE RIGHT OF FIRST REFUSAL ABSENT ANY ALLEGATION IN THE COMPLAINT, MUCH LESS A FINDING, THAT THE DISPUTED LAND IS WITHIN A PLACE DECLARED TO BE BOTH AN AREA OF PRIORITY DEVELOPMENT AND URBAN LAND REFORM ZONE SIMPLY BECAUSE THIS ISSUE WAS NOT ASSIGNED AS ERROR IN THE APPELLANT'S BRIEF.[35]

Petitioners concede that they did not specifically raise the applicability of P.D. No. 1517 in the assignment of errors in their appeal brief, but nonetheless insist that the Court of Appeals is accorded a broad discretionary power to waive the lack of assignment of errors and consider plain errors. They argue that respondent has no cause of action against them. She did not allege in her complaint that the property is within an area proclaimed both as an Area of Priority Development (APD) and an Urban Land Reform Zone (ULRZ), much less did she prove them, to warrant the application of P.D. No. 1517. They posit that respondent's lack of cause of action cannot be cured by their failure to assign it as error on appeal because granting respondent the right of first refusal under P.D. No. 1517, when she is not entitled thereto, will deny petitioners substantial justice.

In her Comment,[36] respondent maintains that petitioners' appeal did not contest the substance of the trial court's decision but merely assailed procedural errors long settled by this Court. Respondent contends that petitioners' argument on the non-applicability of P.D. No. 1517 is a matter of defense which must be pleaded in a motion to dismiss or in the answer, otherwise it is deemed waived under Section 1,

Rule 9 of the Rules of Court.[37]

In our Resolution of September 15, 2000,[38] we gave due course to the petition and required the parties to submit their respective memoranda which they complied with.[39]

As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.[40] Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[41]

However, as with most procedural rules, this maxim is subject to exceptions. Indeed, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Section 8 of Rule 51 of the Rules of Court provides:

> SEC. 8 *Questions that may be decided*. No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[42]

In the present case, the trial court concluded that respondent's claim was founded on P.D. No. 1517 premised only on being a lessee who has resided on the property since 1967.

P.D. No. 1517, which took effect on June 11, 1978, seeks to protect the rights of bona-fide tenants in urban lands by prohibiting their ejectment therefrom under certain conditions, and by according them preferential right to purchase the land occupied by them.[43] Section 6 of the law provides:

> Section 6. *Land Tenancy in Urban Land Reform Areas.* – Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years