

SECOND DIVISION

[G.R. No. 146996, July 30, 2004]

**AURORA GUIANG, PETITIONER, VS. EVA T. CO, DOING BUSINESS
UNDER THE BUSINESS NAME, ETC LENDING INVESTOR,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

On September 10, 1992, the Regional Trial Court of Santiago, Isabela, Branch 21, rendered a Decision^[1] in Civil Case No. 0809, ordering herein petitioner Aurora Guiang to pay respondent Eva T. Co the principal amount of ₱64,870.00, plus interests thereon. The decretal portion reads:

WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered ORDERING the defendant Aurora Guiang to pay to the plaintiff Eva T. Co the total sum of Sixty-Four Thousand Eight Hundred Seventy Pesos (₱64,870.00) plus 18% interest per annum from August 3, 1990 until fully paid and to pay the costs of the suit.

SO ORDERED.^[2]

The decision became final and executory. On motion of the respondent, the trial court issued a Writ of Execution.^[3] Deputy Sheriff David R. Medina levied thirty (30) parcels of land^[4] owned by the petitioner. The deputy sheriff set the sale of the properties at public auction on May 27, 1993 and served the petitioner with a copy of the Notice of Levy and Auction Sale.^[5] The properties were sold at public auction on May 27, 1993 to the respondent for ₱308,701.00, and thereafter, Deputy Sheriff Medina executed a Sheriff's Certificate of Sale in her favor.^[6] The petitioner received a copy of the said certificate of sale on August 20, 1993.^[7]

On September 7, 1994, the petitioner filed a Complaint against the respondent and Deputy Sheriff Medina in the Regional Trial Court of Santiago City, Isabela, Branch 35, captioned: "for the redemption of foreclosed properties; consignment of payment and damages." The case was docketed as Civil Case No. 2096. The petitioner alleged that when the respondent filed her complaint in Civil Case No. 0809, her (petitioner's) account amounted to ₱112,574.00. She further alleged that she had been offering to pay the said amount to the respondent, but that the latter rejected her offers; she, likewise, offered the said amount to Medina after the sale of her properties at public auction, but the latter rejected the same, and told her that she should remit ₱308,701.00, the purchase price of the properties. She further alleged that she was depositing with the court the amount of ₱112,574.00.

In her Answer to the complaint, the respondent alleged that the petitioner had no

cause of action against her and that she was guilty of forum shopping.

After the petitioner failed to redeem the properties, Deputy Sheriff Medina executed a Deed of Final Sale on August 16, 1995 over the said properties in favor of the respondent. On August 31, 1995, the Register of Deeds issued titles over the properties in favor of the respondent.

On November 8, 1996, the trial court rendered judgment^[8] in Civil Case No. 2096 ordering the dismissal of the complaint.

The petitioner appealed the decision to the Court of Appeals, docketed as CA-G.R. CV No. 56850. However, because of her failure to file her appellant's brief, the CA dismissed her appeal on August 10, 1998. Her motion for reconsideration of the dismissal was, likewise, denied in a Resolution dated December 13, 1998. Entry of Judgment was made of record in the appellate court on February 10, 1999.^[9]

On August 29, 2000, the petitioner filed a petition in the CA captioned, "for annulment of the writ of execution" against the respondent and Deputy Sheriff Medina. The case was docketed as CA-G.R. SP No. 60427.

The petitioner alleged therein that the deputy sheriff violated Section 15, Rule 39 of the Rules of Court when he levied on and sold at public auction her thirty (30) parcels of land, instead of selling only such part of the properties as was amply sufficient to satisfy the judgment and costs. She also averred that, under the decision of the court in Civil Case No. 0809, she was ordered to pay to the petitioner only the amount of ₱64,870.00, plus interests thereon, or the total amount of ₱112,574.00. However, the deputy sheriff sold at public auction all the thirty (30) parcels of land for ₱308,701.00, much more than the amount due under the decision of the court.

The petitioner also alleged that Section 21, Rule 39 of the Rules of Court, provides that when the sale is of real property consisting of several home lots, they must be sold separately. However, in this case, the deputy sheriff sold the thirty (30) parcels of land all at the same time, and for a lump sum. In so doing, the deputy sheriff violated the said rule, as he should have sold each property separately, and only that part until the judgment debt shall have been fully satisfied. The petitioner cited the ruling of this Court in *Buan v. Court of Appeals*^[10] to buttress the contention. She prayed that, after due proceedings judgment be rendered in her favor, thus:

WHEREFORE, foregoing premises considered, the petitioner most respectfully prays that the assailed writ of execution conducted (*sic*) in Civil Case No. 0809 be declared **NULL and VOID**, thereby **ANNULLING** the Sheriff's Final Deed of Sale dated August 16, 1995 executed in favor of Eva T. Co and **REVERTING** ownership over the real properties sold on execution to petitioner.

Other reliefs, just and equitable under the premises, are likewise being prayed for.^[11]

On September 25, 2000, the Court of Appeals issued a Resolution dismissing the petition, on the ground that the remedy of the petitioner was to appeal from the

decision of the trial court.^[12] The petitioner filed a motion for reconsideration, where she alleged that her petition was one for the annulment of the implementation of the Writ of Execution issued by the trial court in Civil Case No. 0809 to the deputy sheriff, due to the excessive levy and sale; hence, a proper remedy under Rule 47 of the Rules of Court.

On February 5, 2001, the CA issued a Resolution denying the petitioner's motion for reconsideration. It ruled that the petitioner's failure to avail of the remedies in the RTC was through her fault, and, as such, she could not invoke Rule 47 of the Rules of Court. According to the CA, the proper remedy was to appeal the decision of the RTC, and while the petitioner appealed the decision, her failure to file her appellant's brief impelled the appellate court to dismiss the same.

The petitioner alleges the following in the petition at bar:

(a)

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT CONSIDERED THE PETITION FOR ANNULMENT OF WRIT OF EXECUTION UNDER RULE 47 NOT A PROPER REMEDY INSPITE OF THE CLEAR PROVISION OF RULE 47 – allowing the annulment of not only decisions, but also final orders – AND THE RULING OF THIS HONORABLE COURT IN THE CASE OF BUAN VERSUS COURT OF APPEALS (235 SCRA 424).

(b)

THE HONORABLE COURT OF APPEALS ERRED IN REFUSING TO GRANT THE PETITION FOR ANNULMENT OF THE WRIT OF EXECUTION AND ALL PROCESSES TAKEN THEREUNDER FILED BY PETITIONER IN CA-G.R. SP NO. 60427 FOR BEING VIOLATIVE OF SECTION 15 (now SECTION 9[b]) and SECTION 21 (now SECTION 19) of RULE 39 OF THE 1997 RULES OF CIVIL PROCEDURE.^[13]

On the first ground, the petitioner asserts that the Court of Appeals erred in holding that her remedy was to appeal from the decision of the RTC, Branch 35, instead of filing a petition for the annulment of the writ of execution issued by Branch 21 of the RTC. The petitioner contends that what she asserted in her petition in the Court of Appeals was that the process taken by the deputy sheriff in implementing the said writ was in violation of Sections 15 and 21 of Rule 39 of the Rules of Court. The petitioner further contends that since the trial court approved the sheriff's Certificate of Sale and the Final Deed of Sale, it thereby sanctioned the wrongful implementation of the writ; hence, the trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction, and, consequently, the writ of execution it issued is null and void. The petitioner argues that the writ of execution issued by the trial court is the final order envisaged in Rule 47 of the Rules of Court.

We do not agree with the petitioner's contention that her petition in the Court of Appeals was one for the nullification of the writ of execution issued by Branch 21 in Civil Case No. 0809. Indeed, the petition was captioned "Petition for Annulment of Writ of Execution." However, the caption is not determinative of the nature of the petition.^[14] The well-settled rule is that the nature of an action/petition is