

## FIRST DIVISION

[ G.R. No. 130228, July 27, 2004 ]

**BERNABE FOSTER-GALLEGO, PETITIONER, VS. SPOUSES ROMEO AND VIVIEN GALANG, VIVE REALTY CORPORATION, MUNICIPALITY OF PARAÑAQUE, TREASURER OF PARAÑAQUE, REGISTER OF DEEDS OF PARAÑAQUE, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of 22 July 1997 of the Court of Appeals in CA-G.R. CV No. 43439. The Court of Appeals affirmed with modification the Decision<sup>[3]</sup> of 8 July 1993 of the Regional Trial Court of Makati, Metro Manila, Branch 148, in Civil Case No. 89-3898. The trial court rendered judgment against Lito Gallego ("Gallego") and declared Romeo and Vivien Galang ("Spouses Galang"), the owners of the parcel of land subject of this case.

#### Antecedent Facts

Vive Realty Corporation ("VRC") acquired several properties at a public auction held by the Municipal Treasurer of Parañaque ("Treasurer") on 29 October 1982. Among these properties was a parcel of land ("Property") with an area of 330 square meters located in Barrio Kaybiga, Parañaque, Metro Manila, and covered by TCT No. 435402. The Treasurer executed a Final Bill of Sale<sup>[4]</sup> over the Property in favor of VRC on 25 November 1983. VRC then filed a petition, docketed as Civil Case No. 5801, to cancel the titles of the properties VRC had purchased during the public auction. In a Decision<sup>[5]</sup> dated 19 December 1983, the Regional Trial Court of Makati, Branch 138 ("RTC-Branch 138"), ordered the Register of Deeds to cancel 11 transfer certificates of title, including TCT No. 435402, and to issue new titles in the name of VRC.

On 22 June 1984, the Spouses Galang purchased the Property from VRC through a Deed of Absolute Sale.<sup>[6]</sup> The Register of Deeds later issued TCT No. (86872) 22786 over the Property in the name of the Spouses Galang. The Spouses Galang took possession of the Property and had it declared in their name for taxation purposes. They diligently paid the corresponding real property taxes.

In April 1989, Romeo Galang came home from Saudi Arabia and discovered a hollow block fence along the perimeter of the Property. Gallego built the fence in March 1989. Although the Spouses Galang brought the matter to the Barangay Lupon for possible settlement, Gallego failed to appear at the barangay hall and instead sent his lawyer. On 16 May 1989, the Spouses Galang filed a complaint for Quieting of

Title with Damages<sup>[7]</sup> against Gallego. The case was raffled to the Regional Trial Court of Makati, Branch 146<sup>[8]</sup> ("RTC-Branch 146").

In his Answer with Counterclaim, Gallego alleged that his brother, Bernabe Foster-Gallego, owned the Property. Gallego denied that his brother was delinquent in the payment of real property taxes. Gallego asserted that his brother had never received a notice of delinquency or a notice of the public auction of the Property, much less a copy of RTC-Branch 138's decision cancelling TCT No. 435402. Gallego pointed out that TCT No. 435402 and Tax Declaration No. A-022-00019 clearly indicated his brother's address as No. 15 Tiller Green S.W. Washington D.C., USA. Since his brother is the true and lawful owner of the Property, Gallego argued that the Spouses Galang should not disturb his possession as caretaker of the Property.

As Gallego subsequently failed to appear at the pre-trial conference and to submit his pre-trial brief, RTC-Branch 146 issued an Order<sup>[9]</sup> on 16 February 1990 declaring Gallego in default and allowing the Spouses Galang to present their evidence *ex parte*. On 10 March 1990, Gallego filed a motion to lift the order of default and to admit his pre-trial brief. On the same day, Bernabe Foster-Gallego ("petitioner") filed a motion for intervention with an attached answer-in-intervention. RTC-Branch 146 denied Gallego's motion but granted petitioner's motion and admitted the answer-in-intervention.

RTC-Branch 146 set a pre-trial conference between the Spouses Galang and petitioner. However, the pre-trial did not push through because petitioner filed on 2 August 1990 a motion to admit third-party complaint, which RTC-Branch 146 granted. Summonses were issued on third-party defendant VRC, as well on the Municipality (now City), Treasurer, and Register of Deeds of Parañaque. VRC failed to file an answer to the third-party complaint.

The case was subsequently re-raffled to the Regional Trial Court of Makati, Branch 65<sup>[10]</sup> ("RTC-Branch 65"). On 4 March 1991, the Spouses Galang started presenting their evidence *ex parte* against Gallego. Petitioner filed a motion to strike out these proceedings and to hold in abeyance the hearing scheduled on 8 April 1991 on the ground that not all the third-party defendants had filed their answers and pre-trial briefs. RTC-Branch 65 denied the motion in an Order dated 6 May 1991.<sup>[11]</sup>

Gallego and petitioner jointly filed a petition for *certiorari* with the Court of Appeals praying to annul the order. The appellate court dismissed the petition for lack of merit. Gallego and petitioner then elevated the matter to this Court, which denied their petition and subsequent motion for reconsideration for lack of reversible error.

The Spouses Galang continued to present their evidence *ex parte* against Gallego on 17 August 1992. On 24 August 1992, they submitted their written offer of evidence and RTC-Branch 65 deemed the case involving the Gallego and the Spouses Galang submitted for decision. RTC-Branch 65 also ordered the Spouses Galang and petitioner to submit their position papers on the procedure to receive further evidence in the case. Both parties complied in September 1992.

In October 1992, petitioner filed a motion to inhibit Judge Abad Santos who granted the motion and inhibited himself. The case was re-raffled to the Regional Trial Court of Makati, Branch 148 ("trial court"). The trial court eventually decided

the original case in favor of the Spouses Galang, and denied petitioner's intervention and third-party complaint.

### **The Ruling of the Trial Court**

The dispositive portion of the Decision of 8 July 1993 of the trial court reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendant Lito Gallego removing any cloud or quieting of title and ownership over the parcel of land covered by TCT No. (86872) 22786 of the Register of Deeds of Pasay City with an area of 330 square meters more or less situated in Barrio Kaybiga, Parañaque, Metro Manila, declaring them at this point in time as exclusive owner of said land and that said defendant Lito Gallego is hereby ordered to pay plaintiffs moral damages in the amount of ₱10,000.00; attorney's fees in the amount of ₱25,000.00 including the appearance fees and ₱3,000.00 as litigation expenses.

With costs against the defendant Lito Gallego.

SO ORDERED.<sup>[12]</sup>

Dissatisfied with the trial court's decision, Gallego and the Spouses Galang appealed to the Court of Appeals.

The trial court also set for hearing the issue of whether trial on the merits should proceed on petitioner's intervention and third-party complaint. After hearing the arguments of the parties concerned and receiving their respective memoranda, the trial court issued on 12 October 1993 the following Order:

WHEREFORE, premises considered,

(1) the order admitting the Answer in Intervention by Bernabe Gallego is hereby reconsidered, and the Motion to Admit the same is hereby DENIED, and the Answer in Intervention is hereby stricken off the record.

(2) the third party complaint filed by Bernabe Gallego is hereby denied admission, and if it was already admitted, the admission is hereby reconsidered and said third party complaint is hereby stricken off the records.

SO ORDERED.<sup>[13]</sup>

Petitioner received the trial court's order on 21 October 1993. Petitioner filed a motion for reconsideration on 5 November 1993, which the trial court denied. Petitioner received a copy of the trial court's denial on 23 January 1995. Petitioner then filed on 26 January 1995 a notice that he was appealing the Order to the Court of Appeals. Instead of filing his own brief, however, petitioner joined in Gallego's appeal.

### **The Ruling of the Court of Appeals**

The Court of Appeals held that petitioner had no legal personality to join Gallego's

appeal, thus:

In fact, with the denial of his motion for intervention, intervenor-appellant never became a party to the case. Thus, he had no legal personality to join defendant-appellant in this appeal to impugn the decision of 8 July 1993, much less to use this appeal as a mode to question the orders denying his intervention. Under Section 2, Rule 12 of the Rules of Court, the Rule then prevailing at the time the intervention of intervenor-appellant was denied, any person desiring to intervene shall file a motion for leave of court and that allowance or disallowance of the motion is addressed to the sound discretion of the court. xxx once the court exercises its discretion, the same cannot be reviewed save in instances where such discretion has been so exercised in an arbitrary or capricious manner in which case a petition for certiorari may be pursued. In other words, if intervenor-appellant believes that the lower court gravely abused its discretion in denying his motion for intervention, his proper forum is elsewhere and not in this appeal.

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But even assuming that the questioned orders are final such that they can be the proper subject of appeal, an examination of the records will show that intervenor-appellant's appeal was interposed out of time. The order of 12 October 1993 denying the motion for intervention of intervenor-appellant was received by him on 21 October 1993; hence, pursuant to Section 39 of Batas Pambansa Bilang 129, he only had a period of fifteen (15) days, or until 5 November 1993, within which to perfect an appeal. Intervenor-appellant instead filed a motion for reconsideration on 5 November 1993 but this was denied by the lower court on 26 December 1994, a copy of the order of which was served on him on 23 January 1995. This means that intervenor-appellant had until the next day, 24 January 1995, within which to perfect his appeal considering that he filed his motion for reconsideration on the very last day to appeal. It will be noted, however, that intervenor-appellant failed to beat his deadline as he filed his notice of appeal only on 26 January 1995. This Court therefore has no jurisdiction to review the assailed orders as they already lapsed into finality. xxx

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One last note. Intervenor-appellant is not without any remedy with the denial of his motion for intervention. Whatever right or interest he may have over the subject property will not in any way be affected by the judgment rendered against defendant-appellant. If indeed there were some irregularities in the sale at public auction of the property and in the cancellation of his title, intervenor-appellant may still avail of the proper remedies under the rules.<sup>[14]</sup>

The Court of Appeals also affirmed the decision of the trial court but deleted the award of damages to the Spouses Galang for lack of basis, as follows:

WHEREFORE, premises considered, the 8 July 1993 decision appealed from is hereby AFFIRMED, with MODIFICATION that the award in favor of plaintiffs-appellants for moral damages, attorney's fees and litigation expenses is DELETED.

SO ORDERED.<sup>[15]</sup>

Gallego and the Spouses Galang did not appeal the appellate court's Decision of 22 July 1997. However, petitioner filed before this Court a petition for review on *certiorari* assailing the Decision.

### **The Issues**

Petitioner contends that:

1. THE COURT OF APPEALS SERIOUSLY ERRED IN NOT SETTING ASIDE THE ORDER DATED OCTOBER 12, 1993 AND THE ORDER DATED DECEMBER 26, 1994 AS WELL AS THE DECISION DATED JULY 8, 1993 AND IN NOT RENDERING A DECISION RULING THAT:

A. THE TRIAL COURT ERRED IN RECONSIDERING THE ORDER DATED APRIL 16, 1990 xxx;

B. THE TRIAL COURT GRAVELY ERRED IN REASONING THAT THE DEFAULT ORDER AGAINST GALLEGGO PRECLUDED THE ADMISSION OF THE VERIFIED ANSWER-IN-INTERVENTION AND THE VERIFIED THIRD-PARTY COMPLAINT OF PETITIONER WHICH HAVE *IPSO FACTO* AND EFFECTIVELY ADMITTED OR INSTALLED PETITIONER AS DEFENDANT OR BECAME THE MAIN DEFENDANT AND INDISPENSABLE PARTY OF THE CASE;

C. THE TRIAL COURT GRAVELY ERRED IN RULING THAT THE INTERVENTION OF PETITIONER IS MERELY ANCILLARY TO THE MAIN ACTION xxx;

D. THE TRIAL COURT GRAVELY ERRED IN NOT CONCLUDING THAT THE NOTICE OF AUCTION SALE AND ITS PUBLICATION, THE CERTIFICATE OF SALE, AND THE FINAL BILL OF SALE INVOLVED ARE ALL VOID *AB INITIO* AND DID NOT AFFECT THE EFFECTIVE AND STANDING VALIDITY AND EXISTENCE OF TCT NO. 435402 xxx;

E. THE TRIAL COURT GRAVELY ERRED IN NOT DECIDING THAT xxx CIVIL CASE NO. 5801 OF THE RTC, BRANCH 138, MAKATI, AND THE PROCEEDINGS AND DECISION DATED DECEMBER 19, 1993<sup>[16]</sup> THEREUNDER ARE VOID;

F. THE TRIAL COURT COMMITTED A SERIOUS ERROR IN NOT DECIDING THAT EVEN ASSUMING THAT THE AUCTION PROCEEDINGS WERE VALID, PETITIONER IN EFFECT HAD REDEEMED HIS PROPERTY WHICH WAS ALLEGEDLY