

FIRST DIVISION

[G.R. No. 126874, March 10, 1999]

**GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS.
ANTONIO P. OLISA, RESPONDENT.**

D E C I S I O N

PARDO, J.:

The case is an appeal *via* certiorari from a decision of the Court of Appeals ordering the Regional Trial Court, Marikina City, to proceed with the proceedings of Civil Case No. 94-50-MK, setting aside the trial court's order dismissing the complaint as against petitioner Government Service Insurance System for annulment of sale and damages, arising from an award to one Benjamin Rivera, of a parcel of sixty five (65) square meters of land, located at the GSIS Subdivision in Marikina [City], Metro Manila.

The facts may be related as follows:

In his lifetime, Benjamin Rivera applied to the Government Service Insurance System (hereafter GSIS) for the award of a residential lot at the GSIS Subdivision, located at Sto. Niño, Marikina [City], Metro Manila. GSIS approved the application. On May 8, 1973, Benjamin Rivera died.

On July 18, 1973, Sixta F. Rivera, the surviving spouse of Benjamin Rivera and her children sold to Antonio P. Olisa their residential house of light materials constructed on the subject lot for four thousand pesos (P4,000.00). Sixta F. Rivera, in behalf of the heirs of the late Benjamin Rivera, executed a waiver of their rights over the subject residential lot in favor of the GSIS. In virtue of such waiver, Sixta F. Rivera gave the passbook of her late husband to Antonio P. Olisa so that he could continue the amortization payments for the lot to the GSIS. Meantime, Antonio P. Olisa took over peaceful and physical possession of the conveyed residential house and the subject parcel of land, and has remained in actual possession of the subject lot up to the present, where he constructed a new residential house thereat.

Although it was Antonio P. Olisa who actually made the amortization payments to the GSIS on the subject property, the receipts were issued still in the name of the deceased Benjamin Rivera.

Upon full payment of the cost of the subject lot, on April 27, 1994, GSIS executed a deed of sale in favor of the heirs of Benjamin Rivera, who had executed on March 24, 1994, an extra-judicial partition of the estate of Benjamin Rivera.

On July 8, 1994, the heirs of Benjamin Rivera executed a deed of sale of the subject parcel of land, already titled in their names, conveying the property to Vicente Francisco, a brother of Sixta F. Rivera.

On August 16, 1994, Antonio P. Olisa filed with the Regional Trial Court, Branch 272, Marikina, complaint for annulment of sale, titles and damages against the GSIS, Sixta, Marilou, Joseph, Jerry, Joselito, and Maribel, all surnamed Rivera and Vicente Francisco.

On September 20, 1994, GSIS filed a motion to dismiss the complaint as against the GSIS, on the ground that the complaint failed to state a cause of action because there was no privity of contract between defendants GSIS and plaintiff Antonio P. Olisa.^[1]

On October 20, 1994, the trial court ordered the dismissal of the complaint as against the GSIS.^[2] Respondent Olisa received notice of the order on October 27, 1994.^[3] On November 3, 1994, respondent Olisa filed a motion for partial reconsideration of the aforesaid order.^[4]

On August 22, 1995, the trial court denied respondent's motion for partial reconsideration, notice of which was received on August 28, 1995. Respondent Olisa did not appeal from the orders dated October 20, 1994 and August 22, 1995.

Instead, on September 8, 1995, Antonio P. Olisa filed with the Court of Appeals, a special civil action for certiorari alleging that the trial court acted with grave abuse of discretion in granting the motion to dismiss the complaint as against the GSIS.^[5]

After due proceedings, on June 10, 1996, the Court of Appeals promulgated its decision setting aside the orders of the trial Court dismissing the complaint as against the GSIS and denying plaintiffs motion for production of documents in the possession of the GSIS.^[6] The Court of Appeals ordered the trial court to proceed with the proceedings of Civil Case No. 94-50 MK.

Hence, the present recourse.^[7]

Petitioner GSIS submits that the Court of Appeals erred in setting aside the trial court's order dismissing the complaint as against the GSIS for the proper remedy is an appeal from the order of dismissal, not a special civil action of certiorari.

We find the petition impressed with merit.

The trial court's order dismissing the complaint as against the GSIS is a final order, not an interlocutory one.^[8] It "finally disposes of, adjudicates or determines the rights, or some rights of the parties, either on the controversy of some definite and separate branch thereof, and which concludes them until it is reversed or set aside."^[9] Hence, it is a "proper subject of appeal, not certiorari."^[10]

However, respondent Olisa did not take an appeal from the order of dismissal. Instead, he filed a petition for certiorari with the Court of Appeals. Certiorari is not available where the proper remedy is an appeal in due course.^[11] And such remedy has lapsed because of respondent's failure to take an appeal. "The special civil action of certiorari is not and can not be made a substitute for appeal or a lapsed appeal."^[12]