

SECOND DIVISION

[G.R. No. 132294, August 26, 1999]

DELFIN R. VOLUNTAD AND HEIRS OF LUZ VOLUNTAD, NAMELY, RAMIL, JESUS, MELCHOR, JOSEPH AND ERWIN, ALL SURNAMED VOLUNTAD, PETITIONERS, VS. SPOUSES MAGTANGGOL AND CORAZON DIZON, AND SPOUSES EUGENIO AND VICENTA REYES AS SUCCESSORS IN-INTEREST AND TRANSFEREES PENDENTE LITE OF SPOUSES DIZON, RESPONDENTS.

DECISION

BELLOSILLO, J.:

This is a petition for review on *certiorari* of the Decision of the Court of Appeals which affirmed the denial by the trial court of a motion for a second alias writ of execution against respondent-spouses Eugenio Reyes and Vicenta Reyes.

On 15 February 1993 petitioners filed a petition for *mandamus* with the Regional Trial Court of Malolos, Bulacan, docketed as Civil Case No. 142-M-93, to direct respondent-spouses Magtanggol Dizon and Corazon Dizon to render a true and correct accounting of the financial obligation of petitioners. It appears that on 12 July 1980 petitioners obtained a loan from the Rural Bank of Pandi secured by a mortgage over one-half of a parcel of land formerly owned by petitioners and covered by TCT No. 25073 (T-7456-M) of the Registry of Deeds of Bulacan. For failure of petitioners to pay the loan, the Rural Bank of Pandi foreclosed the mortgage and the property was sold at public auction with the Bank becoming the highest bidder. More than three (3) months after the certificates of sheriff's sale were registered, the mortgagee-vendee Bank, without the knowledge of petitioners, assigned its rights over the property to respondent-spouses Magtanggol and Corazon Dizon. In their petition with the trial court, petitioners prayed to be allowed to exercise their right of redemption over the subject property for the amount of P124,762.04 with legal rate of interest from 17 December 1982 up to its legal redemption.

On 16 February 1993 petitioners caused the annotation of a notice of *lis pendens* on the subject property then under the name of Carmen Voluntad and Maria Voluntad, predecessors-in-interest of petitioners. Upon partition into two (2) of the property covered by TCT No. 25073 (T-7456-M) the notice of *lis pendens* was carried over to TCT No. T-166332-M in the name of respondent-spouses Dizon. The Dizons then filed an omnibus motion to dismiss the petition and to strike out the notice of *lis pendens*.

On 20 May 1993 the trial court issued an order dismissing the case on the ground of *res judicata* and granting the motion to strike out the notice of *lis pendens* "there is no longer need for such annotation on the title of the subject property with the dismissal of the case." Pursuant to this order, the Registry of Deeds of Meycauayan

on 24 May 1993 cancelled the notice of *lis pendens*.

Upon denial of the motion for reconsideration, petitioners went to the Court of Appeals questioning the order of the trial court cancelling the *lis pendens* and dismissing the petition. On 31 August 1994 the appellate court in CA-G.R. No. SP-33454 rendered a decision setting aside the order of the trial court which dismissed the complaint and remanded the case to the court *a quo* for further proceedings.

On 8 December 1995 the trial court rendered a decision in favor of petitioners directing respondent-spouses Dizon (a) to render a true and correct accounting of the financial obligation of petitioners to the Rural Bank of Pandi, Inc., in Bulacan as assigned to respondent Dizons; (b) to allow petitioners to exercise their right of redemption over the one-half undivided portion of the parcel of land covered by TCT No. 25073 (T-7456-M) for the amount of P124,762.04 with legal rate of interest from 17 December 1982 up to the date of legal redemption; and, (c) to pay petitioners attorney's fees of P30,000.00.

After the judgment had become final and executory, the trial court issued an order directing the issuance of a writ of execution. On 21 February 1995 a writ of execution was issued which was however returned unsatisfied for the reason that the property was already sold to respondent-spouses Eugenio and Vicenta Reyes. Hence, petitioners filed another motion for the issuance of an alias writ of execution. The motion was granted by the trial court. Unfortunately, the sheriff's return dated 4 November 1996 showed that the alias writ was unsatisfied because the subject property was already transferred and sold by respondent-spouses Dizons to another person, referring to respondent-spouses Eugenio and Vicenta Reyes.^[1] As a result of the transfer, TCT No. 166332-M in the name of Magtanggol and Corazon Dizon was cancelled and TCT No. T-178105-M was issued in the name of the spouses Eugenio and Vicenta Reyes.^[2]

Petitioners filed a Motion for Second Alias Writ of Execution claiming, *inter alia*, that a notice of *lis pendens* had been annotated in the title with the filing of Civil Case No. 142-M-93 and the order directing the cancellation of the notice of *lis pendens* had been set aside by the Court of Appeals in its decision in CA-G.R. SP No. 33454, and respondents Vicenta and Eugenio Reyes were transferees *pendente lite* when respondent-spouses Dizon sold and transferred to them the property subject of a pending litigation.

On 26 November 1996 the trial court issued an order denying petitioners' motion for second alias writ of execution. On 7 February 1997 petitioner's motion for reconsideration was also denied.

Consequently, petitioners filed with the Court of Appeals a special civil action of *certiorari* and *mandamus* alleging grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the trial court and praying that it be directed to issue an alias writ of execution against the transferees of the property, herein respondent-spouses Reyes. However on 22 October 1997 the Court of Appeals dismissed the petition.

Hence, petitioners came to this Court alleging that the Court of Appeals erred: (a) in not ordering the Regional Trial Court to issue an alias writ of execution against