

EIGHTEENTH DIVISION

[CA-G.R. CV. No. 04556, November 28, 2014]

LILIA APAS, PLAINTIFF-APPELLANT, VS. ROY SALUBRE, IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS THE PROVINCIAL TREASURER OF THE PROVINCE OF CEBU; PALMA BATOBALANOS IN HER PERSONAL CAPACITY AND IN HER OFFICIAL CAPACITY AS GOVERNMENT OFFICIAL (MUNICIPALITY OF STA. FE, CEBU) DETAILED AT THE PROVINCIAL TREASURER'S OFFICE OF CEBU (LAND TAX DIVISION); AND MARILYN CELOCIA, AS PURCHASER OF THE REAL PROPERTY SOLD AT PUBLIC AUCTION; AND V & G BETTER HOMES SUBDIVISION, DEFENDANT-APPELLEES.

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Assailed in this appeal filed under Rule 41 of the 1997 Rules of Civil Procedure, as amended, are the Resolution^[1] dated 12 January 2012 rendered by the Regional Trial Court, 7th Judicial Region, Branch 28 of Mandaue City, and its Order^[2] denying reconsideration dated 28 May 2012, in Civil Case MAN-6634. The Resolution dismissed the complaint on ground of lack of jurisdiction for non-payment of "a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time of the institution of the action" as required in Section 267 of the RA 7160.

THE FACTS

Culled from the records are the following facts:

A Certificate of Sale of Delinquent Real Property to Purchaser^[3] dated July 1, 2009 with number COS No. 01-11-2009 was issued by the Office of the Provincial Treasurer of the Cebu Province, the pertinent portion whereof reads, as follows:

"I HEREBY CERTIFY that after having been duly advertised for sale in accordance with Section 260 of Republic Act No. 7160 (The Local Government Code of 1991), the delinquent real property herein below described has today been sold at public auction at CONSOLACION, Cebu to Marilyn Celocia, a Filipino citizen, single, of legal age, a resident of Paso, Cansaga, Consolacion, Cebu, for the sum of THIRTY-EIGHT THOUSAND FIVE HUNDRED PESOS ONLY (P38,500.00) as total price sale,

payment of which is hereby acknowledge[d] to have been received from him/her as per Official Receipt Nos. x x x.

x x x x

Description of the Property Sold

Lot No. 11 blk., No. 14	Name of Delinquent Taxpayer: V & G Better
Tax Dec. No.: 15980/14786	Homes Subd., Inc. c/o Lilia Apas
x x x	Location: Nangka, Consolacion, Cebu
x x x	Assessed Value: x x x
Area: 100 sq.m., 35.38 sq.m.	TCT No. T-63915

x x x x"

By its Memorandum^[4] dated 8 September 2010, the Office of the Treasurer in the Province of Cebu ordered Lilia Apas to vacate the subject property within thirty (30) days from receipt thereof.

On 7 March 2011, the Government Security and Insurance Service (GSIS) executed a Deed of Absolute of Sale^[5] over the subject lot, in favor of Spouses Lilia S. Apas and Rogelio C. Apas.

Hence, the complaint^[6] filed against Roy Salubre, the Provincial Treasurer of the Province of Cebu, Palma Batobalonos of the Provincial Treasurer's Office of Cebu (Land Tax Division), Marilyn Celocia, purchaser of the subject property at the public auction, and the V & G Better homes Subdivision. In her complaint, Lilia Apas mainly alleged that she purchased the subject lot through a loan obtained from the GSIS, and that on March 7, 2011, the GSIS executed a deed of absolute sale over the subject lot in their favor. She further alleged that, without her knowledge and that is, prior to the execution of this deed of sale, the subject lot was already sold at public auction as can be gleaned from the Memorandum issued by the Provincial Treasurer Roy Salubre with the attached Certificate of Sale of Delinquent Real Property to Purchaser. That, upon receipt of the memorandum, she approached defendants Salubre and Batobalonos to manifest her desire to pay the unpaid taxes but was denied as it has already been sold to the highest bidder, Marilyn Celocia. She added that Amelina Batobalonos, sister-in-law of Palma Batobalonos, likewise, submitted a bid. She continued that V & G Subdivision, the owner and seller of the subject lot, failed and refused to inform her of all the tax liabilities and that, it allowed Roy Salubre and Palma Batobalonos to pursue the public auction in violation of her constitutional rights to due process. She prayed for the issuance of a temporary restraining order (TRO) and/or preliminary prohibitory injunction to restrain or enjoin the defendants from continuing further their illegal acts.

In their Answer,^[7] Roy Salubre and Palma Batobalonos countered that it is not true

that Lilia Apas did not know about the notice of delinquent payment of taxes before the public auction sale. In fact, A Notice of Warrant of Levy^[8] and Warrant of Levy^[9] were sent and received by Lilia Apas as shown in the photocopies thereof. Then, a Notice of Auction Sale was posted at the bulletin board of Barangay Nangka where the subject lot is located as can be gleaned from Certification^[10] issued by the Office of the Barangay Captain of Barangay Nangka. Another copy of the Notice of Auction Sale^[11] was posted at the bulletin board at the Office of the Municipal Treasurer of Consolacion as evidenced by the Certification issued by the said office. Too, the Notice of Auction Sale was published for three (3) times in the Sun Star Daily on June 5, 6, and 7, 2009. Without any doubt, Lilia Apas should have already learned about the delinquent payment of her property. In fact, she failed to present any documents to prove that she paid the real property taxes due on the subject property which are necessary expenses for the maintenance thereof. Hence, there is no one to blame but herself. Anent the allegation that Amelina Batobalonos was one of the bidders at the auction sale of the subject property, such an allegation has no basis as the said person was not present thereat neither did she have any participation in the said transaction as can be seen in the Attendance Sheet^[12] dated June 26, 2009. The plea for issuance of a TRO and/or injunction would serve no purpose as the auction sale was done in accordance to law and legal procedure.

In her Reply to the Answer with Compulsory Counterclaim^[13] filed by Roy Salubre and Palma Batobalonos, Lilia Apas insisted not receiving the Notice of Warrant of Levy and the Warrant of Levy. The signature appearing in the received stamp is not hers. The allegation that the redemption period commenced on the date of the public auction is incorrect and has no basis in law. Section 28, Rule 39 of the Rules of Court provides that the period of redemption shall be within one (1) year from the date of the registration of the certificate of sale and not from the time of the public auction sale. To add, the sale was not yet registered hence she can still redeem the subject property. Whether or not the purchaser at the auction sale does not want to re-sell the subject property to her is of no moment as the law is clear that she can still exercise the right to redeem the same.

In her Answer with Counterclaim,^[14] Marilyn Celocia averred that she learned about the auction sale from the newspaper where the notice of auction sale was published. There would have been no auction sale if only Lilia Apas had been religious in the payment of taxes. Her failure to pay the realty taxes due on the subject property resulted to its forfeiture in favor of the government. And that, the proceedings that transpired before and during the auction sale conducted by the Province of Cebu, which proceedings are being questioned by Lilia Apas, deserve the presumption of regularity. By special and affirmative defenses, Marilyn Celocia asseverated that the right of Lilia Apas to redeem has already prescribed pursuant to the law applicable in this instance, which is RA 7160 or the Local Government Code of 1991, specifically Section 261 thereof. This law does not mention that the period of redemption shall be reckoned from the date of issuance of the certificate of sale. On this ground alone, the complaint should be dismissed. Another reason to justify the instant complaint's dismissal is Section 267 of RA 7160 which provides for the deposit with the court of the amount of the purchase price plus two percent (2%) interest per month from the date of sale to the time of the filing of the instant complaint. Failing which, is fatal to the cause of Lilia Apas.

In her Reply with Answer to Compulsory Counterclaim,^[15] Lilia Apas denied paragraph 7 of Marilyn Celocia's Answer. Lilia Apas alleged that there would be lack of due process if the redemption period would be counted from the date of the issuance of the certificate of sale. She added that the redemption period provided by law is precisely for the benefit of the owner of the property. On this consideration, the redemption period has not yet expired hence, she is still entitled to redeem the subject property. In not allowing her to redeem would easily deprive her of this right. As to the deposit contemplated in RA 7160, she is very much willing to deposit the same as she manifested in the previous hearing.

On 12 January 2012, the RTC issued the assailed Resolution, the *fallo* of which reads as follows:

"WHEREFORE, due to the foregoing premises, this case is hereby DISMISSED for the Court has not acquired jurisdiction over the petitioner's complaint.

Notify parties through their respective counsel, of this Order.

IT IS SO ORDERED."^[16]

Lilia Apas filed a motion for reconsideration^[17] of the Resolution dismissing her complaint. Therein, she averred that prior to receipt of the said resolution, she, for several times, talked to a court staff to inquire when she should make the required deposit. That, the first time she called the court, she was told to call back after a week because the person in charge was on leave. The next time she called the court, she was told to just wait for the RTC's order to direct her to make the deposit. That is why, she was surprised to learn after her last call to the court that her case was already dismissed. She maintained that she is very much willing and ready to give the required deposit. She, thus, prayed that she be allowed to make the deposit and, that, the instant case be reinstated.

The RTC, however, denied the motion for reconsideration, *viz* -

"WHEREFORE, above premises considered, petitioner's Motion for Reconsideration is hereby DENIED for lack merit.

IT IS SO ORDERED."

Hence, this appeal, where Lilia Apas, now plaintiff-appellant, assigns this sole error:

"The trial court gravely erred in its Order dated January 12, 2012 as it is not in accord with the decided cases of the Supreme Court in *National Housing Authority vs. Iloilo City, Et. Al.*, G. R. No. 172267, August 20, 2008 and *GSIS vs. City Treasurer and City Assessor of the City of Manila*, G.R. No. 186242, December 23, 2009."

THE ARGUMENTS

The plaintiff-appellant's

Plaintiff-appellant stresses that the subject property was still owned and registered under the name of GSIS when it was sold at public auction sale conducted by the Province of Cebu on June 26, 2009 to satisfy her real property tax delinquency. In fact, the Supreme Court in *GSIS v. The City Treasurer and the City Assessor of the City of Manila*, declared that the GSIS enjoys under its charter full tax exemption and as an instrumentality of the national government is not liable to pay real estate taxes. The Supreme Court added in the same case that even assuming that the property is taxable under the beneficial use rule, still the property cannot be subject to a public auction sale notwithstanding its realty tax delinquency. In view of the foregoing, the Province of Cebu has absolutely no legal basis to sell the subject property belonging to the GSIS at a public auction sale to satisfy tax delinquency. Consequently, the auction sale conducted by the Province of Cebu is null and void. And since, the properties of the GSIS cannot be auctioned then Section 267 of RA 7160 (the Local Government Code) will not apply. The same doctrine was enunciated in the case of *NHA v. Iloilo City* (G.R. No. 172267, August 20, 2008).

Defendant-appellee Marilyn Celocia's

For one, the appeal is dismissible on grounds of lack of proper verification and certification against forum shopping.

For another, the assigned error was not raised as an issue during the trial at the lower court. As elucidated in a catena of cases and more specifically in *Mendoza v. CA* (274 SCRA 527 [1997]), the Supreme Court held that: "Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule."

The cases cited by the plaintiff-appellant, to wit: *NHA v. Iloilo City* and *GSIS v. City Treasurer, et. al.*, are not applicable in the case at bar because the properties subject therein are all directly used by the GSIS and NHA, for its own benefit and welfare. This being so, both instrumentalities are exempted from payment of real property tax.

This case is, however, different from the afore-cited cases. Here, the subject property is being used by the plaintiff-appellant and has been in her possession for a long time now. That, the subject property was purchased from V & G Better Homes Subd. through loan obtained from the GSIS. Truly, the GSIS is not the beneficial user of the subject property. Although the said property was registered in the name of the GSIS, title thereto was transferred/ceded for a consideration to the plaintiff-appellant, who is a taxable person. The only concern of the GSIS is for the loan or encumbrance to be re-paid. True, the GSIS is not taxable but the Supreme Court in