

SIXTH DIVISION

[CA-G.R. CV. No. 96586, November 13, 2014]

ANGELITA GARCIA-VIBORA, PLAINTIFF-APPELLANT, VS. EDDIE RIVERO, DEFENDANT-APPELLEE.

DECISION

TIJAM, J.:

Assailed in the present appeal are the following Orders of the Regional Trial Court of Parañaque City, Branch 195:

(1) The Order^[1] dated May 14, 2010, which denied plaintiff-appellant's *Motion to Litigate as Indigent Litigant*^[2]; and

(2) The Order^[3] given in open court on December 9, 2010, which dismissed the case for failure to pay the proper docket fees.

This case traces its roots from a complaint^[4] filed by plaintiff-appellant Angelita Garcia-Vibora against defendant-appellee Eddie Rivero for *Annulment of Contract and Cancellation of Title with Prayer for Temporary Restraining Order* before the RTC of Parañaque City, Branch 195. Said complaint was eventually dismissed by the trial court on the ground of plaintiff-appellant's failure to pay the deficiency docket fee based on the P4.5 million selling price of the subject property. Plaintiff-appellant appealed to the Court of Appeals, which granted the appeal and remanded the case to the trial court for further proceedings.^[5] Aggrieved by the Court of Appeals' Decision, Defendant-appellee filed with the Supreme Court a petition for review but it was dismissed. In like manner, the motion for reconsideration subsequently filed thereto was denied.

The Factual Antecedents:^[6]

"During the lifetime of Leonora Garcia, the deceased mother of appellant (Angelita), she had several real properties, one of which was a parcel of land then covered by Transfer Certificate of Title (TCT) No. 935312 with an area of 193 square meters, situated at No. 16012 and 1361-D Airport Road, Baclaran, Parañaque City, Metro Manila. During her lifetime, she entered into a contract of sale of said parcel of land with appellee (Rivero) for an agreed sale price of Four Million Five Hundred Thousand Pesos (P4,500,000.00) as evidenced by a deed of sale dated 4 February 1988.

Angelita agreed to the contract of sale and transferred the title to Rivero

after he paid in consideration of the contract Three Million Pesos (3M) and a promise that he will later pay the balance of P1,500,000.00. After repeated and strong assurance from Rivero that he will pay the balance immediately after the execution of the deed of sale, Leonora Garcia agreed and signed the deed of sale. Rivero however never made any other payments to Leonora Garcia, in clear violation of the agreement.

Thus, on 7 July 2003, Angelita filed a complaint for Annulment of Contract and Cancellation of Title with Prayer for Temporary Restraining Order (TRO) against Rivero before the RTC of Parañaque City. She alleged that as the only surviving heir of the deceased Leonora Garcia, she is seeking the annulment of the said contract of sale as Eddie Rivero has now been exercising acts of ownership over the said property, to her surprise and disbelief. The subject real property had been surreptitiously, covertly, and illicitly transferred and registered by Rivero and his wife Henrietta Uy in their names through the deed of sale, after defrauding and through clever machinations, stealth and deceitful means to make it appear that the vendor Leonora Garcia signed the questioned deed of sale. She alleged that Rivero took advantage of the vendor's mental weakness and physical faculties, old age, extremely poor vision and innocence. Despite Rivero's and his wife's full knowledge of the defects of the said deed of sale, both of them, connived, conspired and confederated with each other and caused the transfer of the said parcel of land and the issuance of a new title in their names which is TCT No. 133973. Angelita thus prayed that the questioned deed of sale be declared null and void and the title issued in the name of Rivero and his wife be cancelled. She also prayed for a temporary restraining order to protect her right against any execution, sale, transfer and any encumbrance on the subject property covered by a new title, as well as the award of attorney's fees and litigation expenses.

After service of summons and a copy of the complaint, Rivero filed a Motion to Dismiss on the following grounds: 1) the trial court has no jurisdiction over the subject matter of the claim because Angelita failed to allege in the complaint the assessed value of the real property involved in the complaint and thus failed to pay the correct amount of docket fees; 2) the complaint states no cause of action; and 3) the cause of action is barred by the Statute of Limitation. Angelita filed her Comment/Opposition to the Motion to Dismiss.

On 14 July 2003, Rivero through counsel moved that the prayer for the issuance of a TRO be deleted from the caption of the case and from the prayer in the petition.

In the Order dated 25 September 2003, the trial court denied the motion to dismiss. It ruled that it has jurisdiction over the subject matter of the claim since the selling price of P4.5 million was alleged in the complaint and Angelita even asserted in her Opposition to the motion to dismiss that the said selling price can be considered the assessed value of the subject property which is 4.5 million.

Thereafter, Rivero moved for an extension of time to file answer or

appropriate pleading, calling the attention of the court to the deficiency docket fees that had yet to be paid by Angelita. The trial court granted the same on 27 October 2003. Meanwhile, he filed a Manifestation and Motion stating that Angelita failed to pay the deficiency docket fee within the period granted by the trial court. Thus, he sought again the dismissal of the complaint for non-payment of the said deficiency.

On 28 October 2003, Angelita filed a timely motion for reconsideration of the Order requiring payment of the deficiency docket fee based on the assessed value of P4.5 million of the subject property. She alleged that the assessed value of the property in question is only P603,690.00 based on the attached Assessment of Real Property.

Rivero filed an Opposition thereto on the grounds of estoppel and judicial admission. He also filed a Motion to Defer Filing of Answer until Angelita's motion for reconsideration and his Manifestation and Motion have been resolved.

In the Order dated 5 December 2003, the trial court denied both motions of the parties. It stated that Angelita's assertion that the selling price of 4.5 million is 'in a very plain language, the estimate or the assessed value of the real property' was the trial court's basis in denying Rivero's motion to dismiss. It adopted Rivero's argument that Angelita was estopped from making any representation or assertion different from that which she had previously made and which was already admitted and considered by the trial court in so resolving to deny Rivero's motion to dismiss. The trial court however gave Angelita another chance to comply with the questioned order requiring payment of the deficiency docket fees based on the assessed value which is the selling price of P4.5 million.

Rivero filed a Motion for Reconsideration of the above order asserting that Angelita not only failed to comply with the Order of the trial court to pay the deficiency docket fees but such non-compliance was even attended by scheme, fraud, and misrepresentations to the trial court. Angelita filed an Opposition thereto.

Before the trial court can resolve the said motion for reconsideration, Angelita filed a Manifestation that she is not in a financial condition to pay the docket fee in the amount of P46,000.00 based on the P4.5 million selling price.

On 23 January 2004, the trial court rendered the assailed Order dismissing the complaint for Angelita's failure to pay the required docket fee, thus it did not acquire jurisdiction over the instant case. Hence this recourse."

As indicated, the case was remanded to the trial court, which, in turn, referred the same for mediation.^[7] Since no amicable settlement was reached by the parties, an Order setting the case for pre-trial conference on August 18, 2009 was issued.

During the pre-trial conference, only defendant-appellee and his counsel appeared. A lawyer-partner representing the plaintiff-appellant moved to reset the pre-trial which was granted. On September 10, 2009, the pre-trial conference was conducted and concluded. A Pre-Trial Order dated September 15, 2009 thus issued providing, among others, the trial dates as follows: October 29, 2009; November 26, 2009; January 28, 2010; March 18, 2010; and, April 22, 2010.

The hearing on October 29, 2009 was cancelled as the Presiding Judge went on leave of absence. The hearing on November 26, 2009 was also cancelled because the correct docket fees have yet to be paid by the plaintiff-appellant. On January 28, 2010 hearing, only the parties' respective counsels appeared. Upon motion by the plaintiff-appellant's counsel, the hearing was postponed for the last time on March 18, 2010 with a warning that the case will be dismissed should plaintiff-appellant fail to present evidence on said hearing date.

On March 15, 2010 or 3 days before the hearing date, plaintiff-appellant's counsel, through a motion, sought for the cancellation of the hearing set on March 18, 2010. Said motion was granted in the trial court's Order dated March 18, 2010.

During the hearing on April 22, 2010, only defendant-appellee's counsel was present. Plaintiff-appellant and counsel failed to appear. Thus, an Order dated April 23, 2010 was issued stating as follows:

"When this case was called at 8:45 in the morning for the second time, only Atty. Santos, counsel for defendant was in court. Atty. Leopoldo dela Rosa, counsel for plaintiff, despite due notice, failed to appear. In the order of this court dated January 28, 2010, this court already warned the plaintiff in the presence of Atty. Dela Rosa that should she fail to present evidence on February 18, which upon the request of Atty. Dela Rosa was cancelled and reset today, this case will be dismissed. Consequently, pursuant to the January 28, 2010 order of this court, for failure of the plaintiff and/or her counsel to appear and present evidence today, the instant complaint as prayed for by Atty. Santos, is hereby ordered DISMISSED, for failure to prosecute."

On May 6, 2010, plaintiff-appellant filed a *Motion*^[8] to be allowed to litigate as an indigent. The motion states, among others, that a re-assessment of the filing fees was made pursuant to the Court of Appeals' decision; and, based thereon, plaintiff-appellant could not pay the re-assessed amount of P26,616.05.^[9] Said motion was denied in an Order dated May 14, 2010.^[10]

On May 13, 2010 plaintiff-appellant filed a motion for reconsideration of the trial court's April 23, 2010 Order dismissing the complaint for failure to prosecute. Said motion was granted thereby plaintiff-appellant was given the chance to present evidence on September 2, 2010. On said date, however, plaintiff-appellant and counsel failed to appear. Nonetheless, the hearing was reset to October 26, 2010.

On October 26, 2010, plaintiff-appellant still failed to appear. Her counsel manifested that the proper docket fees have yet to be paid. The hearing was set for the last time on December 9, 2010 where both counsels were given time to