

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

DOMINGO R. DANDO,
Petitioner,

-versus-

**G.R. No. 102013
October 8, 1993**

**NORMAN JAMES FRASER, MARITA S.
CAYMO and COURT OF APPEALS,**
Respondents.

X-----X

DECISION

QUIASON, J.:

This is an Appeal by *Certiorari* under Rule 45 of the Revised Rules of Court from the Decision of the Court of Appeals in CA-G.R. CV No. 26050, entitled "DOMINGO R. DANDO vs. NORMAN JAMES FRASER, et al.," reversing the decision of the Regional Trial Court, Branch 33, Siniloan, Laguna, in Civil Case No. 5-423.

It appears that on November 15, 1983, Cornelio F. Carlos sold to Amelia Gayon the Argentina Club and Disco (CLUB) located at No. 2110 Roxas Boulevard, Pasay City and housed in a building leased from Dominador S. Luz.

On the same day, Gayon also executed a Deed of Trust, attesting that Gayon, as trustee, bought the CLUB, including the improvements found therein for and in behalf of respondent Norman J. Fraser from Cornelio F. Carlos for the sum of P370,000.00. The said Deed of Trust stated that respondent Fraser furnished all the funds for the purchase and operation of the said CLUB and that Gayon was administering, operating and holding the aforesaid CLUB for and in behalf of respondent Fraser.

On April 9, 1984, respondent Fraser sold on installment basis the said CLUB to Silverio V. Puno, Arnaldo L. Domingo and Ronald Clifton Vercoe as evidenced by a "Sale of Nightclub on Installment Basis" (Records, Vol. II, p. 235; Annex "F") for the sum of P510,000.00. However, the buyers were allowed to operate and take possession of the said CLUB earlier or on April 1, 1984.

On or about April 10, 1984, Gayon consulted petitioner for legal advise about the moves being taken by Puno and Domingo to get the CLUB from her (TSN, June 18, 1986, p. 4). She was advised by petitioner that she had a right to possess the CLUB and must file a case against Puno, Domingo and respondent Fraser (TSN, June 18, 1986, p. 4). Furthermore, she was advised to get the CLUB by force since litigations are usually protracted (TSN, p. 5; *ibid*).

Acting on petitioner's advice, Gayon, together with ten policemen, proceeded to the CLUB on April 18, 1984 and succeeded in evicting Puno and his partners (TSN, p. 6; *ibid*).

In anticipation of a case to be filed by Puno against Gayon, petitioner prepared a Deed of Sale (Records, Vol. I, p. 13; Exhibit "A") whereby Gayon allegedly sold the said CLUB to him for P350,000.00 on April 2, 1984. Said date was antedated to make it appear that the sale was made earlier than the one made by respondent Fraser to Puno and his partners. A receipt for the amount of P350,000.00 was likewise prepared by petitioner and signed by Gayon.

Petitioner succeeded in convincing Gayon to allow one Mr. Fujicawa, who was supposedly interested in buying the CLUB, to operate it for one month on a trial basis. However, it turned out that it was petitioner himself, not Mr. Fujiwara, who operated the said CLUB.

Because of their forcible eviction from the CLUB, Puno and his partners filed a complaint for forcible entry with damages and preliminary mandatory injunction against Gayon and one “Atty. Yam” with the Metropolitan Trial Court of Pasay City. Atty. Yam happened to be a law partner of petitioner. When petitioner met Puno, he misrepresented himself as “Atty. Yam” by presenting Atty. Yam’s calling card.

On December 10, 1986, the Metropolitan Trial Court of Pasay City rendered its decision ordering: (1) Gayon and all persons claiming rights under her to vacate the premises known as the Argentina Club and Disco; (2) to pay the plaintiffs the sum of P20,000.00 a month as reasonable compensation for the use and occupation of the aforesaid premises, starting April 18, 1984 until she and all persons claiming possession under her finally vacate the premises and possession thereof was restored to plaintiffs; and (3) the sum of P5,000.00 as attorney’s fees (Original Records, Vol. I, p. 98).

On December 14, 1984, pursuant to the Order of Execution issued by the Metropolitan Trial Court of Pasay City, Gayon and “Atty. Yam” (petitioner) were evicted from the Club (Original Records, Vol. I, p. 22).

Aggrieved by his eviction, petitioner filed a criminal case for estafa against respondent Fraser with the Office of the City Fiscal of Pasay City. He alleged that Gayon sold to him the CLUB and that respondent Fraser, by falsely pretending to be the owner of the CLUB, was able to sell the same to the group of Puno, who in turn succeeded in having him evicted from the CLUB pursuant to the Order of Execution issued by the Metropolitan Trial Court of Pasay City. The criminal case was, however, dismissed on August 22, 1986. After the reinvestigation, the complaint was likewise dismissed on June 11, 1985 (Rollo, p. 74; Annex “1”). A petition for review was dismissed by the Department of Justice (Rollo, p. 79; Annex “2”).

On or about February 1, 1985, petitioner filed an “Amended Complaint for Ownership, Possession, Annulment of Contract and Damages with prayer for Preliminary Mandatory Injunction and/or Restraining Order” against respondents Fraser, Puno, Domingo,

Gayon and Vercoe docketed as Civil Case No. 2588-P with the Regional Trial Court, Pasay City, Metro Manila.

On February 12, 1985, the Regional Trial Court, Pasay City, Metro Manila granted the prayer for a writ of preliminary mandatory injunction. However, on March 11, 1985, the said trial court approved the counterbond filed by respondents Fraser, et al. and dissolved the writ of preliminary mandatory injunction. Puno and his partners were authorized to resume the operation and management of the CLUB, subject to the conditions set forth in the Order (Original Records, Vol. I, p. 173).

From the order denying his motion for reconsideration of the order dissolving the writ of preliminary mandatory injunction, petitioner appealed to the Court of Appeals (CA-G.R. No. 0618-SP).

The appellate court dismissed the petition on October 24, 1986.

Undaunted, petitioner filed on September 26, 1985, a complaint for a sum of money and damages with preliminary attachment against respondents Fraser and Marita S. Caymo with the Regional Trial Court of Siniloan, Laguna, Branch 33 and docketed as Civil Case No. 5-423. Respondent Caymo was impleaded for allegedly being the wife of respondent Fraser.

Petitioner sought to collect the amount of P510,000.00, representing the purchase price of the CLUB sold by respondent Fraser to Puno and his partners. Furthermore, petitioner sought to attach the property of respondent Caymo located at San Lorenzo Village, Makati alleging that the latter was a mere dummy of respondent Fraser. In addition thereto, petitioner sought to recover damages for his eviction from the CLUB pursuant to the decision of the Metropolitan Trial Court of Pasay, City, alleging that not being a party to the said case, he was not given his day in court (Original Records, Vol. I, pp. 1-9).

In his complaint, petitioner alleged that he was the owner of the CLUB, having bought the same from Gayon on April 2, 1984 as evidenced by a Deed of Sale (Original Records, Vol. I, p. 13) and a receipt (Original Records, Vol. I, p. 15).

On September 30, 1985, the trial court ordered the attachment of respondent Caymo's property located at San Lorenzo Village, Makati (Records, Vol. I, p. 39).

On June 22, 1987, the trial court rendered the questioned decision, the dispositive portion of which reads as follows:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay jointly and severally the plaintiff the following amounts:

- a) Five Hundred Ten Thousand (P510,000.00) pesos as an indemnity for the investment of plaintiff in the Argentina Club and Disco.
- b) One Million (P1,000,000.00) pesos by way of moral damages.
- c) Thirty Four Thousand (P34,000.00) pesos monthly for compensatory damages from December 14, 1984 up to the date of actual indemnification.
- d) Seven Hundred Fifty Thousand (P750,000.00) pesos as exemplary damages arising from the fraud committed by the defendants against the plaintiff.
- e) One Hundred Thousand (P100,000.00) pesos as attorney's fees; and
- f) To pay the costs of the suit.

SO ORDERED.” (Records, Vol. III, pp. 534-535).

On July 7, 1987, respondents Fraser and Caymo filed a notice of appeal which was granted by the trial court on July 15, 1987 (Original Records, Vol. III, pp. 538-539). On the same day, petitioner filed a Motion for Issuance of Writ of Execution (Original Records, Vol. III, p. 543). Both respondents filed an opposition to the Motion for Issuance of Writ of Execution Pending Appeal (Original Records, Vol. III, pp. 553-579).

On August 21, 1987, the trial court issued an Omnibus Order granting petitioner's motion for issuance of writ of execution and denying respondents' opposition thereto and recalled its Order dated July 15, 1987 elevating the records of the case to the Court of Appeals (Original Records, Vol. IV, p. 603).

On August 31, 1987, the trial court issued a writ of execution (Original Records, Vol. IV, p. 607).

Respondents Fraser and Caymo filed with the Court of Appeals separate petitions for certiorari with prohibition and mandamus and restraining order docketed as CA-G.R. No. 12713 and 12718 respectively. On December 15, 1987, the Court of Appeals rendered its decision, affirming the trial court's Omnibus Order granting execution pending appeal but ordered petitioner to file a good and sufficient bond in the amount of P2,000,000.00 in order to answer for any damage which the respondents may suffer in the event the decision was reversed on appeal (Original Records, Vol. IV, p. 643).

On January 11, 1988, respondent Caymo filed a motion for reconsideration of the appellate court's order, granting execution pending appeal (Original Records, Vol. IV, pp. 657-659).

On January 20, 1988, a notice of sheriff's sale over the property of respondent Caymo was issued (Original Records, Vol. IV, p. 672).

On January 21, 1988, respondent Caymo filed an urgent motion for status quo and motion for leave to file counterbond (Original Records, Vol. IV, pp. 676-677).

In its Resolution dated January 22, 1988, the Court of Appeals ordered the parties to maintain the status quo until the motion for reconsideration was resolved by it (Original Records, Vol. IV, pp. 684-685).

On April 22, 1988, the Court of Appeals resolved the motion for reconsideration by ordering petitioner to increase the bond from P2,000,000.00 to P2,800,000.00 (Original Records, Vol. IV, pp. 702-703).

On April 12, 1989, petitioner filed with the trial court a “Motion for Issuance of Order To Enforce the Writ of Execution dated August 31, 1987” (Original Records, Vol. IV, p. 730).

On April 28, 1989 respondent Fraser filed an opposition to the aforesaid motion (Records, Vol. IV, p. 734). On the other hand, respondent Caymo filed a “Motion to Disapprove Bond of Plaintiff or To Allow Defendant to File a Counterbond or Supersedeas Bond” (Original Records, Vol. IV, p. 736).

On March 14, 1990, the trial court issued an order, granting petitioner’s motion, which ordered the Provincial Sheriff to enforce the writ of execution dated August 31, 1987 and to proceed with the auction sale (Original Records, Vol. V, p. 921).

On April 30, 1990, petitioner as the highest bidder in the auction sale of respondent Caymo’s property was issued a Certificate of Sale (Original Records, Vol. V. p. 995).

On May 5, 1990, respondent Caymo filed a motion to elevate the records to the Court of Appeals (Original Records, Vol. V, p. 992).

On May 14, 1990, petitioner filed a motion for the issuance of writ of possession, which was denied by the trial court on May 15, 1990. The trial court ordered the elevation of the case to the Court of Appeals (Original Records, Vol. V, p. 1112).

On July 3, 1991, the Court of Appeals rendered its decision, reversing the trial court’s decision and declaring null and void the execution sale of respondent Caymo’s property. The dispositive portion of said decision reads:

“IN VIEW OF THE FOREGOING PREMISES, the decision appealed from is hereby REVERSED and SET ASIDE and the execution sale of Marita Caymo’s property covered by T.C.T. No. 135563 is declared null and void. The complaint filed by plaintiff-appellee is hereby dismissed. Costs against plaintiff-appellee” (Rollo, p. 47).

On September 23, 1991, petitioner's motion for reconsideration was denied (Rollo, p. 52).

Hence, this petition.

Petitioner raises the following assignment of errors:

I

“THE COURT OF APPEALS ERRED IN CONSIDERING A MATTER NOT STATED AS AN ASSIGNED ERROR AND NOT PROPERLY ARGUED BEFORE IT.

II

THE COURT OF APPEALS ERRED IN CONSIDERING THE VALIDITY OF THE EXECUTION SALE OF THE PROPERTY OF DEFENDANT-RESPONDENT CAYMO ALTHOUGH SUCH MATTER HAD ALREADY BEEN RESOLVED WITH FINALITY BY THE SAME COURT IN ANOTHER CASE.

III

THE COURT OF APPEALS ERRED IN REVERSING THE FINDINGS OF FACT OF THE TRIAL COURT” (Rollo, p. 22).

Petitioner contends that the Court of Appeals acted beyond and in excess of its jurisdiction when it ruled on the validity of the execution sale of the property of respondent Caymo. Claiming that such matter was neither stated in the assignment of errors nor properly argued in respondent Caymo's brief, he invokes the rule that “no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the Court, in its option, may notice plain errors not specified, and also clerical errors” (Rule 51, Section 7, Rules of Court).

We disagree. Although as a general rule, the Court of Appeals may determine only such questions as those that have been properly raised in the briefs, this rule, however, admits of exceptions.

In the cases of *Maritime Agencies and Services, Inc. vs. Court of Appeals*, G. R. No. 77638 and *Union Insurance Society of Canton, Ltd. vs. Court of Appeals*, G.R. No. 77674, 187 SCRA 346 [1990] we ruled that:

“Besides, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.”

At any rate, the Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case.”

In her brief, respondent Caymo raised the issue of her alleged marriage to respondent Fraser as evidenced by a photo-copy of a marriage contract presented by petitioner. Such marriage contract became the basis for the trial court to conclude that respondents Caymo and Fraser were married to each other and therefore the property registered in the name of respondent Caymo is a conjugal property of the spouses which may be attached.

The determination of the existence of marriage between respondent Caymo and Fraser will determine the validity of the attachment and execution sale made on the property registered in the name of respondent Caymo alone. Hence, the issue on the validity of the attachment and execution sale of respondent Caymo’s property is closely related to the error properly assigned, that is the existence of the marriage between respondents Caymo and Fraser.

As correctly found by the Court of Appeals, the photo-copy of an alleged marriage contract presented by petitioner is inadmissible for failure to comply with Rule 132 Sections 25 and 26 of the Rules of Court (now Rule 132, Sections 24 and 25 of the 1987 Rules on Evidence). As between a photo-copy of an alleged marriage contract and a certification issued by the Local Civil Registrar of Pasay City attesting to the fact that no marriage was officiated by Judge Eriberto

V. Loreto of the Metropolitan Trial Court of Pasay City and that no record of such marriage could be found in the Local Civil Registrar, the latter deserves more weight.

Having failed to prove the existence of marriage between respondent Caymo and Fraser, the attachment and eventual execution sale of the property registered in the name of respondent Caymo is therefore invalid.

Anent the second error assigned by petitioner, the petitions for certiorari with writ of prohibition filed by respondents Caymo and Fraser with the Court of Appeals docketed as CA-G.R. Nos. 12713 and 12718 respectively, merely questioned the jurisdiction of the Regional Trial Court, Br. 33, Siniloan, Laguna, in granting the motion for execution pending appeal in Civil Case No. 5-423.

A special civil action for certiorari is an original or independent action and not a continuation or a part of the trial resulting in the rendition of the judgment complained of (*Perez vs. Court of Appeals*, 168 SCRA 236 [1988]). Hence, no finality as to the merits of the case was made. The only issue decided by the Court of Appeals in CA-G.R. Nos. 12713 and 12718 was whether the trial court properly issued the writ of advance execution.

The third error assigned by petitioner questions the findings of the Court of Appeals as to the validity of the Deed of Trust executed by Amelia Gayon in favor of respondent Fraser.

Petitioner contends that respondent Fraser, being an Australian citizen, is precluded from owning a retail business pursuant to Republic Act No. 1180, otherwise known as the Nationalization of Retail Trade Law. Indeed under said law, an alien is prohibited from engaging in the retail business (Sec. 1) which includes the operation of a cocktail lounge with a restaurant (Sec. 4).

However, the Mayor's Permit for the operation of the Club as a cocktail lounge with a restaurant (Records, Vol. I, p. 21) was issued in favor of "Amelia Gayon."

Under Section 5 of the Nationalization of Retail Law:

“Every license to engage in retail business issued in favor of any citizen of the Philippines or of any association, partnership or corporation wholly owned by citizens of the Philippines shall be conclusive evidence of the ownership by such citizen, association, partnership or corporation of the business for which the license was issued except as against the Government of the State.” (Italics supplied)

Since the license to engage a cocktail lounge and restaurant was issued in the name of Gayon, who is a citizen of the Philippines, such license shall be conclusive evidence of Gayon’s ownership of the said retail business as far as private parties, including petitioner, are concerned.

Gayon testified that the deed of sale and receipt prepared by petitioner and signed by her were simulated, the same having been prepared only in anticipation of the ejectment case filed by Puno against her. She also claims that the deed of sale and receipt were antedated to make it appear that it was made earlier than the deed of sale executed by respondent Fraser.

The characteristic of simulation is the fact that the apparent contract is not really desired or intended to produce legal effects nor in any way alter the judicial situation of the parties (Carino vs. Court of Appeals, 152 SCRA 529 [1987]).

In this case, Gayon was convinced by petitioner that she could be protected from the action to be filed against her by Puno if she would execute a deed of sale in his favor. Thus, she even admitted to have lied in her testimony during the ejectment case filed against her upon the instructions of petitioner.

If it were true as claimed by petitioner that he was in possession of the CLUB as early as April 1, 1984, then it was impossible for him not to have known that Puno and his partners were in actual, physical possession of the CLUB up to April 18, 1984. Why did he not bring an ejectment case against them? If it were true that Gayon sold to him the CLUB on April 2, 1984, why was it Gayon, instead of him, who evicted Puno on April 18, 1984? The truth is, he was not in possession

of the CLUB on April 1, 1984 and neither was the said CLUB legally conveyed to him on April 2, 1984. He did not do anything because there was nothing for him to protect for he knew that the contract of sale and the receipt made in his favor were merely simulated for the protection of Gayon.

WHEREFORE, the petition is hereby **DENIED** and the decision of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

Cruz, Davide, Jr. and Bellosillo, JJ., concur.
Grño-Aquino, J., is on leave.