Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EMILIO A. AQUINO,
Petitioner,

- versus -

CARMELITA TANGKENGKO, MORRIS TANGKENGKO and RANILLO TANGKENGKO,
Respondents.

G.R. No. 197356

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

AUG 24 2016

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DECISION

BERSAMIN, *J.*:

A litigant who brought a petition for relief from judgment under Rule 38 of the *Rules of Court* cannot anymore avail himself of an action for annulment of judgment under Rule 47 of the *Rules of Court* based on the same grounds available to him for the prior remedy.

The Case

The petitioner seeks to reverse and set aside the resolutions promulgated March 10, 2011[1] and June 21, 2011,[2] whereby the Court of Appeals (CA) respectively dismissed his petition for annulment of judgment and denied his ensuing motion for reconsideration.

Antecedents

The petitioner filed a petition for the issuance of the writ of habeas corpus in the Regional Trial Court (RTC) in Malolos City, Bulacan in order

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[1] *Rollo*, pp. 78–81; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justice Rosmari D. Carandang and Associate Justice Manuel M. Barrios.

[2] Id. at 109–110.

to recover parental custody of his minor child, Azilimson Gabriel T. Aquino (Azilimson), from his mother-in-law, herein respondent Carmelita Tangkengko, and his brothers-in-law, herein respondents Morris Tangkengko and Ranillo Tangkengko. The petition was docketed as Special Proceeding No. 211-M-2005.[3]

In his petition, the petitioner alleged that he had been married to the late Lovely Tangkengko-Aquino (Lovely) in 1997, and their marital union had borne the minor Azilimson; that they had initially resided in Malabon but had subsequently moved to Bulacan in July 2001to live with her family; that by 2004, their marital bliss had started to fade following their constant quarrels arising from the conflict between him and some members of the family of Lovely, particularly his mother-in-law and his brother-in-law, respondent Ranillo, the latter having physically hit him at one point; that the conflict had forced him to leave the conjugal dwelling in Bulacan in order to live in his sister's Quezon City residence; that even so, he had continued to give support to Azilimson, and, in turn, Lovely had allowed their son to stay with him in Quezon City on weekends; that his access to Azilimson had become scarce since the death of Lovely on April 22, 2005; that the respondents had refused to inform him of the whereabouts of Azilimson despite his continuous demands; and that the respondents had thus deprived him of the rightful custody of his son.

The respondents denied that they had not deprived the petitioner of the lawful custody of his son, and countered that Azilimson's stay with them in Bulacan had been with the petitioner's consent because he had abandoned his son with them since the death of Lovely; and that they had then assumed the responsibility of raising and taking care of Azilimson.[4]

On February 19, 2007, after due proceedings, the RTC dismissed the petition, observing that it was for the best interest of Azilimson that his custody remained with the respondents in Bulacan.[5]

The petitioner's motion for reconsideration was denied on April 26, 2007, with the RTC declaring that the ruling had attained finality because the petitioner had filed the motion for reconsideration out of time. The RTC further declared that it found no cogent reasons to disturb its ruling.[6]

The certificate of finality was issued by the RTC in due course.[7]

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3 Id. at 135–137.
4 Id. at 142–150.
5 Id. at 209–221.
6 Id. at 231–232.
7 Id. at 233.

The petitioner brought the petition for relief from judgment to seek the nullification of RTC's aforesaid rulings, contending that his motion for reconsideration had been filed on time. He submitted in support of his contention the certification secured from the Philippine Postal Corporation.

On September 26, 2007, the RTC denied the petition for relief from judgment, opining that the petition was in the nature of a second motion for reconsideration and was, therefore, prohibited by the *Rules of Court*.[8]

Undeterred, the petitioner assailed the dismissal of his petition for habeas corpus in the CA via the petition for annulment of judgment on the grounds of extrinsic fraud and denial of due process.[9]

As mentioned, the CA dismissed the petition for annulment of judgment on March 10, 2011,[10] pointing out that the petition did not comply with the conditions set for the remedy by Section 1 and Section 2, Rule 47 of the *Rules of Court*; and that the petition suffered from other infirmities, like the certified true copy of the assailed order of February 19, 2007 not being clearly legible; and the failure of the petitioner to indicate material dates (*i.e.*, date of receipt of the order of April 26, 2007 denying his motion for reconsideration vis-à-vis the order of February 19, 2007; and the date of receipt of the order dated September 26, 2007 issued by the RTC denying his petition for relief from judgment).

On June 21, 2011, the CA denied the petitioner's motion for reconsideration because his discussion and arguments therein had been "judiciously evaluated and passed upon," and that, accordingly, there was no compelling or cogent reason to deviate from the ruling under consideration.[11]

Hence, this appeal.

Issues

In his petition for review on *certiorari*, the petitioner formulates and presents the following issues for consideration and resolution, to wit:

> 1. Whether or not the Honorable Court of Appeals erred in dismissing the petition filed before it for Annulment of Judgment based on **purely technical grounds** without even touching on the merits of the case?

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8 Id. at 241–244.
9 Id. at 245–291.
10 Supra note 1.
11 Supra note 2.

2. Whether or not the Order (Decision) dated February 19, 2007 of respondent judge should be annulled under Rule 47 of the Rules of Court based on **extrinsic fraud and denial of due process**;

3. Whether or not the trial court erred in concluding that petitioner abandoned his wife and son and is therefore rendered unfit to be awarded custody of his minor son;

4. Whether or not the respondent judge correctly awarded custody over petitioner's minor son to the **maternal grandmother**, respondent CARMELITA in violation of Article 212 of the Family Code which provides that "In case of absence or death of either parent, the parent present shall continue exercising parental authority. x x x"[12]

In their comment filed on December 14, 2011,[13] the respondents maintain that the dismissal by the CA of the petition for annulment of judgment was entirely valid; that the denial of the petition for relief from judgment by the RTC had been based on the law and evidence with a view to serving the best interest of the child; and that the order dismissing the petition for habeas corpus had been a just decision under the pertinent law and supporting evidence.

Ruling of the Court

The appeal lacks merit.

Before anything more, the Court clarifies that the third issue, which refers to the abandonment by the petitioner of his wife and minor son, thereby rendering himself unfit to claim the custody of the son; and the fourth, which relates to whether the trial court "correctly awarded custody over petitioner's minor son to the maternal grandmother," being factual, would require the Court to thoroughly review the records of the trial court. Such a thorough review would unravel the circumstances backstopping the conclusion and finding by the trial judge that the petitioner had abandoned his son and his wife; the circumstances warranting the declaration of his unfitness to have the custody of the son; and the factual justifications why the trial judge preferred the maternal grandmother to him on the issue of custody despite the express language of Article 212 of the *Family Code* explicitly favoring him. But the Court is not a trier of facts, and is limited in this mode of appeal to the resolution of questions of law. As such, it cannot embark into such thorough review of the records. It now declines to deal with the third and fourth issues posed by the petitioner.

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12 *Rollo*, pp. 32-33.
13 Id. at 296-304.

The first and second issues, supra, focus on the bases for the CA's dismissal of the petition for annulment of judgment without touching on the merits of case, and on whether or not the petitioner had sufficient grounds to seek the annulment of the order of the RTC issued on February 19, 2007.

We sustain the CA, and opine that the CA correctly and justly dismissed the petition for annulment of judgment and deemed the case closed and terminated.

First of all, a petition for annulment of judgment initiated under Rule 47 of the *Rules of Court* is a remedy granted only under exceptional circumstances provided the petitioner has failed to avail himself of the ordinary or other appropriate remedies provided by law without fault on his part. It has often been stressed that such action is never resorted to as a substitute for the petitioner's own neglect in not promptly availing himself of the ordinary or other appropriate remedies.[14]

Owing to the exceptional character of the remedy of annulment of judgment, the limitations and guidelines set forth by Rule 47 should be strictly complied with. Time and again, the Court has emphatically reminded litigants on this stricture, and on the dire consequences of ignoring the limitations and guidelines. The Court has explained why in *Dare Adventure Farm Corporation v. Court of Appeals*:[15]

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. **A petition for annulment that ignores or disregards any of the safeguards cannot prosper**.

The CA did not fail to stress in its assailed resolution of March 10, 2011 that Section 1 of Rule 47 postulated that the petition for annulment of judgment was available only when the ordinary remedies of new trial,

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14 *Republic v. De Castro*, G.R. No. 189724, February 7, 2011, 641 SCRA 584, 590.
15 G.R. No. 161122, September 24, 2012, 681 SCRA 580, 586-587.

appeal, petition for relief or other appropriate remedies were no longer available through no fault of the petitioner. It consequently pronounced that the petitioner could no longer avail himself of the remedy simply because he had already brought the petition for relief from judgment pursuant to Rule 38. He had thereby foreclosed his recourse to the remedy of annulment of the judgment under Rule 47.

Secondly, the ground of extrinsic fraud that the petitioner relied upon to support his petition for annulment of judgment was available to him when he initiated the petition for relief from judgment in the RTC.[16] If he did not raise it then, he was justifiably precluded from raising it in the CA to advocate the annulment of the ruling of the RTC reposing the custody of his minor son in the respondents instead of in him.

Thirdly, anent lack of due process as a ground for the annulment of judgment, the records contradicted the petitioner's averment thereof. Indeed, the petitioner had fully participated in every stage of the proceedings taken in the RTC, presenting his own evidence and having been given the reasonable opportunity and time to refute all the adverse allegations of the respondents. Under the circumstances, he could not validly aver denial of due process as a basis for seeking the annulment of judgment.

And lastly, the Court cannot dwell on the supposed merits of the petitioner's judicial quest for the custody of his minor son. His pleas were those of a father already found and declared unfit by the trial court with jurisdiction over the matter of custody. Also, the merits of the son's custody are not the question elevated to the Court in this appeal, but the propriety of the dismissal of his petition for annulment of judgment by the CA. We have really to resist the temptation to reopen the matter of custody of the minor son, attractive though it may be for most of us, because if we did not we would here be involving ourselves in reopening a dispute that the RTC had already settled with finality. We would thereby disregard the immutability of such final disposition, and traverse territory forbidden to all courts, including ours.

It remains for us to advise the petitioner to accept the unwanted outcome with humility, and just try to make amends for his many omissions that the RTC carefully noted and listed in its ruling dismissing the petition for custody. By so doing, he could still rekindle someday the ties with his son that were wittingly or unwittingly cut since the death of his wife.

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[16] *See* Section 2, Rule 47 of the *Rules of Court*.

WHEREFORE, the Court **AFFIRMS** the assailed resolutions of the Court of Appeals; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice