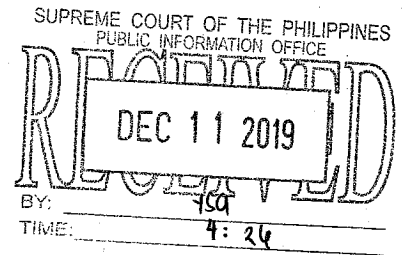




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 28, 2019** which reads as follows:

“G.R. No. 237360 (Gary T. Albar v. Court of Appeals (Cebu) and Jose Jennifer Albar Delfin). – For our resolution in the instant Petition for Review on *Certiorari* filed by petitioner Gary T. Albar (*petitioner*) are the assailed Resolutions dated March 16, 2017 and January 17, 2018, issued by respondent Court of Appeals, Cebu.

The assailed resolutions dismissed petitioner’s Petition for Annulment of Judgment dated September 15, 2016 (*the CA Petition*) and affirmed the Regional Trial Court (*RTC*) of Roxas City, Branch 19’s Order dated April 13, 2004, which directed the: (a) Register of Deeds of the Province of Capiz to issue new owner’s duplicate copies of Transfer Certificate of Title (*TCT*) Nos. T-631 and T-632, and Original Certificate of Title (*OCT*) No. RO-3459; and (b) Register of Deeds for the City of Roxas to issue a new owner’s duplicate copy of TCT No. T-1473, all in the name of the late Rafaela Ortiz. The CA Petition also pleaded for the cancellation of said certificates of title and the reinstatement of the originals thereof.

At the outset, the Court finds it imperative to first clarify what an action for annulment of judgment means, and what its requirements are under the law. Said action, as defined in *Mateo Encarnacion v. Thomas Johnson*,¹ is a remedy in equity so exceptional in nature that it may only be availed of when the ordinary or other appropriate remedies provided by law are wanting without fault or neglect on the petitioner’s part. It is a condition *sine qua non* that one must have availed of the proper remedies before resorting to the action for annulment of judgment.²

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¹ G.R. No. 192285, July 11, 2018.

² *Id.*

In this case, the Court of Appeals was correct in dismissing the CA Petition for being improperly filed. The Court of Appeals highlighted the actions of Miguel T. Albar (*Miguel*), petitioner's predecessor-in-interest, and how said actions ultimately prevented petitioner from pursuing and praying for the annulment of the RTC judgment, *viz.*:

Miguel, by pursuing and availing of the remedy of cancellation of the erstwhile improvidently issued certificates of title in Special Case No. SPL-64-06 and Special Case No. SPL-70-07, and subsequently elevating the dismissal of the latter case with this Court, **had tacitly admitted that those remedies were indeed available to protect their rights and interests over the titles and properties of Rafaela Ortiz.**³

As correctly pointed out by the Court of Appeals, it cannot be denied that petitioner had the luxury of other remedies at his disposal prior to resorting to the CA Petition, and petitioner should have availed of said remedies first. In the wise words of Justice Jardeleza, "we cannot simply disregard the statutory requirements of an action for annulment of judgment, lest we open the gates for possible abuse of litigants who seek to delay the enforcement of final and executory judgments of the courts."⁴

ACCORDINGLY, the Court resolves to **DISMISS** the instant Petition for Review on *Certiorari* for failure to show that respondent Court of Appeals, Cebu, in CA-G.R. CEB-SP No. 10355, erred in dismissing petitioner Gary T. Albar's Petition for Annulment of Judgment dated September 15, 2016.

SO ORDERED. *Caguioa, J., on official leave. Inting, J., additional member per Special Order No. 2726.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *plio*

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³ Rollo, p. 28. (Emphasis supplied).

⁴ *Baclaran Marketing Corporation v. Nieva*, G.R. No. 189881, April 19, 2017, 823 SCRA 579, 594.



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The Hon. Presiding Judge
Regional Trial Court, Branch 19
5800 Roxas City
(Spl. Case No. SPL-070-03)

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