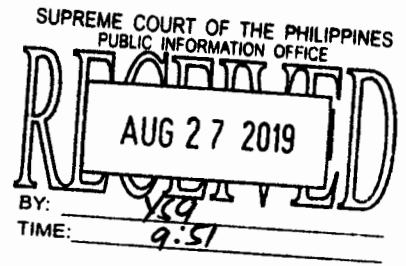




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated June 10, 2019 which reads as follows:*

**“G.R. 213932 (Mario A. Tan and Teresita A. Tan v. Edgar P. Villanueva, City Treasurer of Quezon City, Registrar of Deeds of Quezon City, Laverne Realty & Development Corporation, and Burgundy Realty Corporation).** – We resolve this petition for review on *certiorari* (with prayer for issuance of a writ of preliminary injunction and/or temporary restraining order)<sup>1</sup> assailing the Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 133666.<sup>2</sup> The CA dismissed Mario A. Tan and Teresita A. Tan’s (petitioners) petition for annulment of judgment of the Decision<sup>3</sup> of the Regional Trial Court (RTC) of Quezon City. The RTC granted the petition for confirmation of final bill of sale and entry of new certificate of title over a condominium unit (petition for confirmation) filed by Laverne Realty & Development Corporation (Laverne).

In this case, we affirm the rule that the remedy of annulment of final judgments is equitable in character, and is allowed only in exceptional cases. A petition for annulment that ignores or disregards any of the safeguards set by the Rules of Court cannot prosper.<sup>4</sup>

Petitioners alleged that they are the owners of Unit G-9 (property) and a parking slot on the second floor of One Burgundy Plaza located at No. 307 Katipunan Avenue, Quezon City.<sup>5</sup> They

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<sup>1</sup> *Rollo*, pp. 23-56.

<sup>2</sup> *Id.* at 8-15, Resolution dated March 6, 2014, penned by Justice Ricardo R. Rosario concurred by Justices Amelita G. Tolentino and Leoncia Real-Dimagiba; and *Id.* at 17, Resolution dated August 14, 2014, penned by Justice Ricardo R. Rosario concurred by Justices Elihu A. Ybanez and Leoncia Real-Dimagiba.

<sup>3</sup> *Id.* at 110-113, Decision dated February 19, 2013, penned by Judge Bernelito R. Fernandez.

<sup>4</sup> *Sibal v. Buquel*, G.R. No. 197825, January 11, 2016, 778 SCRA 517.

<sup>5</sup> *Rollo*, pp. 9-10.

claimed that they purchased the property from private respondent Burgundy Realty Corporation (BRC) in 1995 as evidenced by a notarized Contract to Sell.<sup>6</sup> BRC, however, delivered the property to petitioners only in December 2007. From then, petitioners took possession of the property and leased it to third persons (tenant/s). They also timely paid the real property taxes<sup>7</sup> (realty taxes) thereon from 2009 to 2013 as shown in the official receipts issued by the Office of the City Treasurer of Quezon City (City Treasurer).<sup>8</sup> Thus, they were surprised when they learned from their tenant that a notice to vacate<sup>9</sup> dated November 29, 2013 and a writ of possession<sup>10</sup> dated November 18, 2013 were served by Ike B. Arches, Sheriff IV of the RTC. They were advised to vacate the premises within three days from receipt of the notice or until December 4, 2013.<sup>11</sup>

Petitioners immediately filed before the RTC a motion to quash writ of possession and notice to vacate.<sup>12</sup> Pending the resolution of the motion to quash, the RTC, in its Order<sup>13</sup> dated December 6, 2013, directed its sheriff to suspend the implementation of the writ of possession.

Upon securing the records of the case, petitioners alleged that they discovered for the first time that the following events transpired:

- (a) The City Treasurer sent a Notice or Statement of Delinquency to BRC for the latter's failure to pay realty taxes on the property from 1998 to 2007 in the total amount of P248,182.32;<sup>14</sup>
- (b) A Final Notice of Delinquency was sent to BRC on February 7, 2008;<sup>15</sup>
- (c) A Warrant of Levy and Notice of Levy was issued to BRC on February 26, 2008 and March 16, 2008, respectively;<sup>16</sup>
- (d) For non-payment of realty taxes plus penalties and other charges amounting to P253,084.84, the property was sold at public auction on April 3, 2008 to Laverne as the highest bidder with a bid price of P1 million for which a Certificate of Sale was thereafter issued;<sup>17</sup>

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<sup>6</sup> *Id.* at 114-117.  
<sup>7</sup> *Id.* at 118-122.  
<sup>8</sup> *Id.* at 10.  
<sup>9</sup> *Id.* at 123.  
<sup>10</sup> *Id.* at 124-126.  
<sup>11</sup> *Id.* at 123.  
<sup>12</sup> *Id.* at 127-132.  
<sup>13</sup> *Id.* at 178.  
<sup>14</sup> *Id.* at 10.  
<sup>15</sup> *Id.*  
<sup>16</sup> *Rollo*, p. 11.  
<sup>17</sup> *Id.*

(e) The City Treasurer sent to BRC a Final Notice to Exercise Redemption on June 19, 2008 but the latter failed to redeem the property, thus the former issued a Final Bill of Sale to Laverne on January 8, 2009;<sup>18</sup>

(f) Two years after the sale or on August 8, 2011, Laverne filed before the RTC a petition for confirmation docketed as LRC No. Q-32081(11);<sup>19</sup>

(g) During the initial hearing, neither oppositors nor government agencies appeared, hence the RTC issued an Order of General Default and allowed Laverne to present evidence *ex parte*;<sup>20</sup>

(h) The RTC, in its Decision dated February 19, 2013, granted Laverne's petition and directed the Register of Deeds of Quezon City to cancel Condominium Certificate of Title (CCT) No. N-10842 and issue a new certificate of title to Laverne;<sup>21</sup> and

(i) On May 22, 2013, the Decision of the RTC became final and executory as evidenced by a Certificate of Finality.<sup>22</sup>

In January 2014, petitioners filed before the CA a petition for annulment of judgment and damages with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction<sup>23</sup> against the RTC Judge, the RTC Branch Clerk of Court, the RTC Sheriff IV, the City Treasurer, the Registrar of Deeds of Quezon City, Laverne and BRC (collectively, respondents). They sought to annul the Decision of the RTC on grounds of lack of jurisdiction, extrinsic fraud, and lack of due process. The *fallo* of the RTC Decision<sup>24</sup> reads:

**WHEREFORE**, judgment is hereby rendered as follows:

1. **CONFIRMING** the Final Bill of Sale issued by the Office of the City Treasurer over the condominium unit covered by Condominium Certificate of Title No. 10842;
2. Directing the Register of Deeds of Quezon City to **ADMIT** the Final Bill of Sale executed by the City Treasurer of Quezon City in favor of Laverne

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Rollo*, p. 11.

<sup>22</sup> *Id.* at 165-166.

<sup>23</sup> *Id.* at 75-108. RTC Judge refers to Hon. Bernelito R. Fernandez; RTC Clerk of Court is Atty. Ihmie Michiko C. Gacad-Presto; RTC Sheriff IV is Ike B. Arches; and City Treasurer is Edgar P. Villanueva.

<sup>24</sup> *Id.* at 110-113.

Realty and Development Corporation over the property covered by Condominium Certificate of Title No. 10842;

3. Declaring the owner's duplicate copy of Condominium Certificate of Title No. 10842, covering the subject property registered under the name of Burgundy Realty, Inc. as **NULL and VOID**;

4. Directing the Registry of Deeds of Quezon City to **CANCEL** the original copy of Condominium Certificate of Title No. 10842 on file with its Registry; and

5. Directing the Registry of Deeds of Quezon City to cause the **ENTRY** of a new certificate of title in the name of Laverne Realty and Development Corporation and to issue the corresponding owner's duplicate of title subject to encumbrances as may be existing on the cancelled Title, which is hereby declared ineffective and without any force.

SO ORDERED.<sup>25</sup> (Emphasis in the original.)

Petitioners alleged that the RTC did not acquire jurisdiction over the case and over their persons because Laverne did not comply with the jurisdictional requirements for land registration cases under Sections 15<sup>26</sup> and 23<sup>27</sup> of Presidential Decree No. 1529 (PD 1529),

<sup>25</sup> *Id.* at 112-113.

<sup>26</sup> Sec. 15. *Form and content.* – The application for land registration shall be in writing, signed by the application or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. The application shall contain a description of the land and shall state the citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them. x x x

<sup>27</sup> Sec. 23. *Notice of initial hearing, publication, etc.*– The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication.

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however*, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern". Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

2. By mailing.

(a) Mailing of notice to persons named in the application. The Commissioner of Land Registration shall also, within seven days after publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.

(b) Mailing of notice to the Secretary of Public Highways, the Provincial Governor and the Mayor. If the applicant requests to have the line of a public way or road determined, the Commissioner of Land Registration shall cause a copy of said notice of initial hearing to be

otherwise known as the "Property Registration Decree."<sup>28</sup> Petitioners also asserted that the auction sale was null and void. They insisted that at the time of the alleged sale, the collection of the payment of realty taxes from 1998 to 2003 had already prescribed under Section 270<sup>29</sup> of Republic Act No. 7160 (RA 7160) or the Local Government Code of 1991.<sup>30</sup>

In its now assailed Resolution, the CA dismissed the petition for annulment of judgment. The CA ruled that petitioners wrongly relied on Sections 15 and 23 of PD 1529 in asserting that the RTC has no jurisdiction over the case, and that Laverne committed extrinsic fraud. It explained that the foregoing sections pertain to original registration or registration of lands not yet under the Torrens System. Thus, they do not apply where, as in this case, the property was already registered and covered by a certificate of title. The CA stressed that what Laverne filed before the RTC was a consolidation of ownership over a property sold at public auction for real estate tax delinquency. Hence,

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mailed to the Secretary of Public Highways, to the Provincial Governor, and to the Mayor of the municipality or city, as the case may be, in which the land lies.

(c) Mailing of notice to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Public Works, the Director of Forest Development, the Director of Mines and the Director of Fisheries and Aquatic Resources. If the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that a tenant-farmer or the national government may have a claim adverse to that of the applicant, notice of the initial hearing shall be given in the same manner to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Mines and/or the Director of Fisheries and Aquatic Resources, as may be appropriate.

3. By posting.

The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

The court may also cause notice to be served to such other persons and in such manner as it may deem proper.

<sup>28</sup> *Rollo*, pp. 88-96.

<sup>29</sup> *Sec. 270. Periods Within Which to Collect Real Property Taxes.*—The basic real property tax and any other tax levied under this Title shall be collected within five (5) years from the date they become due. No action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period. In case of fraud or intent to evade payment of the tax, such action may be instituted for the collection of the same within ten (10) years from the discovery of such fraud or intent to evade payment.

The period of prescription within which to collect shall be suspended for the time during which:

- (1) The local treasurer is legally prevented from collecting the tax;
- (2) The owner of the property or the person having legal interest therein requests for reinvestigation and executes a waiver in writing before the expiration of the period within which to collect; and
- (3) The owner of the property or the person having legal interest therein is out of the country or otherwise cannot be located.

<sup>30</sup> *Rollo*, pp. 97-102.

Sections 75<sup>31</sup> and 108<sup>32</sup> of PD 1529 in relation to RA 7160 govern.

Further, the CA stated that it is the registered owner of the property who is deemed as the taxpayer, and the only one entitled to a notice of delinquency and resultant proceedings relative to an auction sale. Here, while petitioners alleged that they are the true owners of the property, the same was still registered under BRC's name as shown by CCT No. N-10842. CCT No. N-10842 is bereft of any annotation or indication that would alert Laverne of any claim against the property. Moreover, even the official receipts attached to the petition show that the payor of the realty taxes is BRC. Thus, under the circumstances, Laverne could not be faulted for only impleading BRC in its petition for confirmation.<sup>33</sup>

As to the claim of petitioners that Laverne deliberately excluded BRC in the proceedings by its failure to serve a copy of its petition to BRC, the CA declared that petitioners are not the proper party to raise the argument.<sup>34</sup>

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<sup>31</sup> *Sec. 75. Application for New Certificate Upon Expiration of Redemption Period.* – Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

<sup>32</sup> *Sec. 108. Amendment and Alteration of Certificates.* – No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; *Provided, however,* That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section. All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

<sup>33</sup> *Rollo*, pp. 14-15.

<sup>34</sup> *Id.* at 15.

Petitioners moved for reconsideration, but the CA denied it; hence, this petition.

Before us, petitioners agree with the CA that Sections 75 and 108 of PD 1529 in relation to RA 7160 govern the petition for confirmation.<sup>35</sup> They allege, however, that the pertinent provisions of PD 1529 require that “all persons in interest” must be personally notified of the proceedings for amendment or alteration of certificates of title. In determining who the “persons in interest” are, resort must be had to RA 7160.<sup>36</sup> Petitioners theorize that “persons in interest”

<sup>35</sup> *Id.* at 38-41.

<sup>36</sup> Sec. 258. *Levy on Real Property.* – After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax. The provincial or city treasurer, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent owner of the property or person having legal interest therein, the description of the property, the amount of the tax due and the interest thereon. The warrant shall operate with the force of a legal execution throughout the province, city or a municipality within the Metropolitan Manila Area. The warrant shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property. At the same time, written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively.

The levying officer shall submit a report on the levy to the sanggunian concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein.

Sec. 260. *Advertisement and Sale.* – Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the owner of the real property or person having legal interest therein may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: *Provided, however,* That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein.

The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection through the remedies provided for in this Title, including the expenses of advertisement and sale.

Sec. 261. *Redemption of Property Sold.* – Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the

refer to persons other than the registered owner of the real property.<sup>37</sup>

Petitioners also contend that Laverne committed extrinsic fraud because of its failure to indicate them or their tenants as actual occupants of the property. They argue that Laverne is not an innocent purchaser for value. As a real estate developer itself, Laverne should have exercised extraordinary diligence in purchasing properties. It cannot solely rely on the face of the Torrens title.<sup>38</sup> Meanwhile, with respect to lack of due process, petitioners raise the same arguments they had before the CA.

In its comment, BRC agrees with petitioners that the auction sale of the property is void because it violated pertinent provisions of RA 7160. It alleges that it only learned of the levy and sale of the property for the first time. It argues that, while the RTC records reveal that the Statement of Delinquency<sup>39</sup> dated January 22, 2008 was received by a certain Marie Anne Hican on January 22, 2008; and while it shows that the warrant of levy<sup>40</sup> dated February 26, 2008 was received by a certain R. Cambogan on February 27, 2008, there is no evidence that these persons were authorized representatives of BRC. The proof of service executed by Emmanuel Bueno, an employee of the City Treasurer's Office, that the statement of delinquency and warrant of levy were served on BRC cannot be considered as proof that BRC was duly served with the notices required by law.<sup>41</sup> The final notice of delinquency<sup>42</sup> dated February 7, 2008 has no proof that it was served.<sup>43</sup> BRC prays that we reverse and set aside the courts *a quo*'s Decisions and it be allowed to pay the taxes due on the property and the City Treasurer be directed to accept the same.

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purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

Sec. 262. *Final Deed to Purchaser.* – In case the owner or person having legal interest therein fails to redeem the delinquent property as provided herein, the local treasurer shall execute a deed conveying to the purchaser said property, free from lien of the delinquent tax, interest due thereon and expenses of sale. The deed shall briefly state the proceedings upon which the validity of the sale rests.

<sup>37</sup> *Rollo*, pp. 38-41.

<sup>38</sup> *Id.* at 47-49.

<sup>39</sup> *Id.* at 293.

<sup>40</sup> *Id.* at 295.

<sup>41</sup> *Id.* at 289.

<sup>42</sup> *Id.* at 294.

<sup>43</sup> *Id.* at 288-289.



The City Treasurer, for his part, asserts that he had done everything legally incumbent upon him. He sent the mandated notices to the declared owner, caused the publication of the notice of public auction in two newspapers of general circulation, and posted the required notices. The notices were mailed to BRC because, as far as the City Treasurer was concerned, BRC was still the “declared owner” since the tax declaration of the property was still in its name. If petitioners claim that they purchased the property and have continuously been in possession of it since December 2007, it is their obligation under RA 7160 to declare the property in their name, but they neglected to do so. The City Treasurer contends that he cannot be expected to go beyond the tax declaration of the property. Besides, not a single document could trace entitlement of notices to the petitioners as the certificate of title, tax declaration and receipts showing payment of realty taxes pertain solely to BRC.<sup>44</sup>

With respect to the argument that the collection for the payment of realty taxes from 1998-2002 had already prescribed, the City Treasurer argues that petitioners are challenging the correctness of the assessment, which is a question of fact, not allowed in a petition under Rule 45. Further, granting that the assessment was made beyond the five-year prescriptive period from the time the realty taxes became due, the government may still assess and collect the unpaid taxes under Section 270 of RA 7160, since BRC has clearly evaded the payment of realty taxes.<sup>45</sup>

The City Treasurer also rejects petitioners’ contention that there was no basis for the levy of the property since they have been paying realty taxes from 2008-2013. He emphasizes that the unpaid taxes covered the years 1998 to 2007 when the property was still owned and in the possession of BRC.<sup>46</sup>

Laverne, in its comment, stresses that the title of the property has always been in the name of BRC. Petitioners merely alleged their ownership and occupation of the property, but failed to present evidence that they have already fully paid it.<sup>47</sup> Laverne agrees with the City Treasurer that BRC was duly notified of its tax delinquency and the impending sale of the property.<sup>48</sup> While RA 7160 requires that the notice shall be sent to the delinquent owner of the property or person

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<sup>44</sup> *Id.* at 220-222.

<sup>45</sup> *Id.* at 226-230.

<sup>46</sup> *Id.* at 230.

<sup>47</sup> *Id.* at 304.

<sup>48</sup> *Id.* at 306.

having legal interest therein, the record is bereft of showing that petitioners have informed the City Treasurer of their interest in the property.<sup>49</sup>

Further, Laverne asserts that Section 267<sup>50</sup> of RA 7160 requires that, before the taxpayer may assail the validity of the tax sale, he/she must deposit with the court the amount for which the real property was sold with two percent (2%) interest per month from the date of sale to the time of the institution of the action. Failure to comply with the deposit is jurisdictional in nature and prevents the court from hearing any action filed by the delinquent taxpayer, his/her successors-in-interest or any real party in interest. Here, petitioners failed to comply with the requirement,<sup>51</sup> hence, their petition should be dismissed.

The issue before us is whether the CA erred in dismissing the petition for annulment of judgment.

We deny the petition and affirm the decision of CA.

Rule 47 of the Rules of Court (Rules of Court) governs actions for the annulment of final judgments, orders, or resolutions of regional trial courts in civil actions. It is a recourse equitable in character, allowed only in exceptional cases where there is no available or other adequate remedy. x x x Since it disregards the time-honored rule of immutability and unalterability of final judgments, Rules of Court impose stringent requirements before a litigant may avail of it.<sup>52</sup>

Section 1 of Rule 47 limits the subject of annulment of judgment to only *final* judgments or orders or those which, finally disposes of a case, leaving nothing more for the court to do in respect thereto. This may be an adjudication on the merits which, based on the evidence presented at the trial, declares categorically what the rights

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<sup>49</sup> *Id.* at 307.

<sup>50</sup> Sec. 267. *Action Assailing Validity of Tax Sale.* – No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

<sup>51</sup> *Rollo*, p. 305.

<sup>52</sup> *Baclaran Marketing Corporation v. Nieva*, G.R. No. 189881, April 19, 2017. Citations omitted.

and obligations of the parties are, and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription.<sup>53</sup> Outside of a final judgment or order, annulment of judgment is an improper remedy.

Here, the petition for annulment filed by the petitioners before the CA seeks to annul and set aside the auction sale of the property and the Decision of the RTC confirming the sale.<sup>54</sup> However, an auction sale is not a final judgment contemplated under the Rules of Court. In *Guiang v. Co*,<sup>55</sup> we held that Rule 47 does not apply to an action to annul the levy and sale of properties at public auction or the certificate of sale executed by the deputy sheriff over said properties. Thus, despite the parties arguments assailing the validity of the auction sale, we are constrained not to rule on the matter. We shall only determine if there is a ground to annul the final and executory Decision of the RTC.

There are three (3) recognized grounds for annulment of judgment, namely: lack of jurisdiction, extrinsic fraud, and lack of due process of law.<sup>56</sup> The first two are provided under the Rules of Court, while the third one is established in jurisprudence. Lack of jurisdiction on the part of the trial court in rendering the judgment or final order pertains to either lack of jurisdiction over the subject matter or over the person of the defendant. The former is a matter of substantive law because statutory law defines the jurisdiction of courts over the subject or nature of the action, while the latter is a matter of procedural law since it involves the service of summons or other processes.<sup>57</sup>

There is extrinsic fraud when the unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.

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<sup>53</sup> *Id.*

<sup>54</sup> *Rollo*, p. 107.

<sup>55</sup> G.R. No. 146996, July 30, 2004, 435 SCRA 556, 562.

<sup>56</sup> *Diona v. Balangue*, G.R. No. 173559, January 7, 2013, 688 SCRA 22, 35.

<sup>57</sup> *Pinausukan Seafood House v. Far East Bank & Trust Company*, G.R. No. 159926, January 20, 2014, 714 SCRA 226, 244.

More importantly, extrinsic fraud must arise from an act of the adverse party and must be of such nature as to have deprived the petitioner of its day in court.<sup>58</sup>

As to lack of due process of law, we held in *Arcelona v. Court of Appeals*<sup>59</sup> that the court must acquire jurisdiction over the persons of indispensable parties before it can validly pronounce judgments personal to them. A person not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he/she is a stranger.<sup>60</sup>

Petitioners invoked all three grounds for annulment of judgment. They fault Laverne and the RTC for not impleading them in the petition for confirmation and for not sending notices to them despite their alleged ownership and possession of the property. Thus, they assert that the Decision of the RTC is void.

Petitioners are incorrect. Sections 75 and 108 of PD 1529 govern the petition for confirmation. The provisions read:

*Sec. 75. Application for New Certificate Upon Expiration of Redemption Period.* — Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, **the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.**

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

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*Sec. 108. Amendment and Alteration of Certificates.* — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. **A registered owner or other person having an interest in registered property, or, in proper cases, the**

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<sup>58</sup> *Supra* note 4 at 517-518.

<sup>59</sup> G.R. No. 102900, October 2, 1997, 280 SCRA 20.

<sup>60</sup> *Id.* at 40.

Register of Deeds with the approval of the Commissioner of Land Registration, **may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased;** or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; **or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate,** the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; *Provided, however,* That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered. (Emphasis supplied.)

Under Section 75, the purchaser of a property at a public auction or anyone claiming under him may petition the court for the entry of a new certificate of title under his name. The court referred to, as stated in Section 108, is the Court of First Instance, now the Regional Trial Court. For the RTC to validly hear and determine the

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petition, all parties in interest must be notified of the case. Here, Laverne, as purchaser of the property at the tax delinquency sale, correctly petitioned the RTC for the confirmation of bill of sale and entry of a new certificate of title in its name. The RTC has jurisdiction over the subject matter of the case because the petition for confirmation is a civil action incapable of pecuniary estimation over which the RTC has exclusive original jurisdiction.<sup>61</sup>

Petitioners insist that they should have been impleaded in the case and notified of the proceedings as they are “parties in interest.” We do not agree.

Petitioners failed to prove that they are parties in interest in the petition for confirmation. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.<sup>62</sup> As correctly argued by Laverne, petitioners failed to show proof that they had fully paid the property. Petitioners merely presented a copy of their contract to sell and on the basis of which, argued that they owned the property. However, in a contract to sell, ownership is by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Payment of the purchase price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.<sup>63</sup> The contract to sell between the petitioners and BRC clearly stated that “the SELLER shall execute the deed of sale conveying to the BUYER all its title, rights and interest in the unit, after the following shall been accomplished: 1) full payment of the balance of the purchase price, all interests, penalties and other charges which may have accrued thereon; x x x”<sup>64</sup>

Significantly, records are bereft of any showing of a deed of absolute sale in favor of petitioners. Also, CCT No. 10248, the tax declaration on the property and the receipts evidencing payment of the realty taxes are all in the name of BRC. While petitioners argue that they cannot be blamed for the failure to timely register the property and that they cannot be made to suffer the consequences of BRC’s negligence as a seller, we also cannot annul a final judgment based on bare assertions of ownership and possession.

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<sup>61</sup> See Section 19(1) of Batas Pambansa Bilang 129 or The Judiciary Reorganization Act of 1980.

<sup>62</sup> See Rule 3, Section 2 of the Rules of Court.

<sup>63</sup> *Sps. Torrecampo v. Alindogan, Sr.*, G.R. No. 156405, February 28, 2007, 517 SCRA 84, 88, citing *Salazar v. Court of Appeals*, G.R. No. 118203, July 5, 1996, 258 SCRA 317.

<sup>64</sup> *Rollo*, p. 115.

We note that aside from the contract to sell, which we already ruled as an insufficient proof of ownership of the property, no other documentary evidence traces title of the property to petitioners. Moreover, petitioners failed to substantiate their claim that the unit was delivered to them and that they have been in possession since. BRC, in their comment before us, could have acknowledged petitioners' claim of ownership and possession but it chose to be silent on the matter. Considering that petitioners' ownership or interest in the property was not established and even disputed, we cannot rule that they are parties in interest entitled to be impleaded in, and/or notified of, the petition for confirmation.

Petitioners further insist that even BRC, the registered owner of the property, was not notified of the proceedings before the RTC. Suffice it to state that, as correctly ruled by the CA, petitioners are not the proper party to raise this argument. Only BRC could claim that it did not receive any notice from the RTC. In any case, the Decision of the RTC states that a copy of the petition for confirmation was served on BRC, to wit:

In due course, the Petition was set for hearing on November 24, 2011 (Order, September 15, 2011) citing all whose interests may be affected thereby to appear on the scheduled hearing and show cause why the Petition should not be granted. The same Order was posted at the Main Entrance of the Quezon City Hall; Bulletin Board of this Branch; Bulletin Board of the Office of the Clerk of Court, Regional Trial Court, Quezon City; and, the Barangay Hall where the property is situated. **Also, copies of the petition together with the September 15, 2011 Order were served on the Register of Deeds of Quezon City; Administrator of the Land Registration Authority; Secretary of the Department of Environment and Natural Resources; City Legal Officer of Quezon City; and, Burgundy Realty Corporation.**<sup>65</sup> (Emphasis supplied.)

Conversely, BRC in its comment before us alleges that it was not served with the required notices.<sup>66</sup> It appears, however, that BRC is pertaining to the notice of delinquency that it should have received

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<sup>65</sup> *Id.* at 110-111.

<sup>66</sup> *Id.* at 289.

before its property may be levied upon and sold at public auction.<sup>67</sup> BRC also adopted petitioners' contention that the auction sale is void.<sup>68</sup> We cannot entertain BRC's arguments. To reiterate, the validity of an auction sale is not a proper subject of a petition for annulment because it is not a final judgment or order. Moreover, whether BRC received the required notice is a question of fact which this Court cannot entertain in a petition under Rule 45. The principle is applicable here considering that the issue of the receipt of notice is a disputed fact. While BRC argues that it has not received any notice, submissions of the parties state otherwise. In their petition before the CA, petitioners submitted that from the records of the *court a quo*, it appears that the City Treasurer sent the required notices to BRC;<sup>69</sup> in its comment, Laverne pleaded that the records of the Office of the City Treasurer show that the tax declarant of record (BRC) was duly notified of its delinquency, and the impending public auction sale.<sup>70</sup> Basic is the rule that we are not a trier of facts. We do not receive and evaluate evidence in the first instance.

Finally, we rule that that there is no extrinsic fraud in this case. Deliberately failing to notify a party entitled to notice constitutes extrinsic fraud.<sup>71</sup> However, we already held that petitioners are not entitled to notice. Further, the rule is that the party alleging fraud bears the burden of proof. The law requires that fraud be established by clear and convincing evidence.<sup>72</sup> Thus, even assuming that petitioners are entitled to notice, they failed to prove that Laverne deliberately excluded them or that Laverne had knowledge of their claim on the property.

In fine, we rule that there is no compelling reason to disturb the ruling of the CA. There exists no ground to annul the decision of the RTC confirming the final bill of sale and ordering the entry of a new certificate of title in the name of Laverne.<sup>73</sup>

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<sup>67</sup> *Id.* BRC alleges that "LAVERNE failed to substantially prove that the required notice of delinquency was indeed given to BRC x x x."

<sup>68</sup> *Rollo*, p. 286, BRC states that it is "joining and adopting the petition of petitioner TAN that the auction sale is VOID."

<sup>69</sup> *Id.* at 80-81.

<sup>70</sup> *Id.* at 306.

<sup>71</sup> *Carillo v. Court of Appeals, et. al.*, G.R. No. 121165, September 26, 2006, 503 SCRA 66, 78, citing *Stilianopulos v. City of Legaspi*, G.R. No. 133913, October 12, 1999, 316 SCRA 523, 534.

<sup>72</sup> *Republic of the Philippines v. Guerrero*, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 438. Citations omitted.

<sup>73</sup> *Rollo*, p. 627. Based on record, title to the property was already transferred to Laverne under CCT No. 004-2016015486 issued on March 10, 2016.

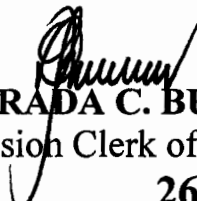


**WHEREFORE**, premises considered, the petition is **DENIED**. The March 6, 2014 and August 14, 2014 Resolutions of the Court of Appeals in CA-G.R. SP No. 133666 are hereby **AFFIRMED**.

The petitioners' urgent motion for issuance of temporary restraining order and/or preliminary injunction, praying, among other, that the Court immediately issue a temporary restraining order enjoining the Regional Trial Court, Branch 96, Quezon City, from acting on herein private respondent Laverne Realty and Development Corporation's omnibus motion (to consign rentals and render an accounting of the fruits of the property after the period of redemption has expired) pending resolution of the instant petition is **NOTED WITHOUT ACTION**.

**SO ORDERED.** *Carandang, J., on leave.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
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VILLANUEVA GABIONZA & DY  
Counsel for Petitioners  
20/F, 139 Corporate Center, 139 Valero Street  
Salcedo Village, 1227 Makati City

The Hon. Presiding Judge  
Regional Trial Court, Branch 97  
1100 Quezon City  
(LRC No. Q-32081[11])

Office of the City Attorney  
7/F Quezon City Hall Building  
1100 Quezon City

The Register of Deeds of Quezon City  
1100 Quezon City

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Manila  
(CA-G.R. SP No. 133666)

Mr. Edgar P. Villanueva  
Respondent  
Quezon City Treasurer's Office  
G/F Annex Building, Quezon City Hall  
1100 Quezon City

Y.F. LIM & ASSOCIATES LAW OFFICES  
Counsel for Burgundy Realty Corp.  
Unit B, 1554 San Marcelino Street, Ermita  
1000 Manila

GABRIEL & MENDOZA LAW OFFICE  
Counsel for Laverne Realty & Dev't. Corp.  
Suite 402, Tempus Place I, No. 21 Matalino  
Street, Diliman, 1101 Quezon City

Atty. Jason G. Belen  
No. 180 Tandang Sora Avenue  
1116 Quezon City

UR

NAF