

TORIBIA LAMAGAN, PETITIONER-APPELLANT, VS. HON. RAFAEL DELA CRUZ AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, AND COSME O. FOLLOSCO, RESPONDENTS-APPELLEES.

G.R. No. L-27950. July 29, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by certiorari from a resolution of the Court of Appeals dismissing the petition for certiorari filed with said court by appellant seeking to set aside a formal ruling issued by the Court of First Instance of Camarines Sur during the course of the trial of the ejectment case below sustaining the adverse party's objection to evidence proffered by appellant as defendant therein and indicating the nature of evidence that would be deemed admissible and competent against the adverse party's torrens title.

As narrated in the petition itself, a complaint for ejectment and damages was filed on September 12, 1963 by respondent Cosme O. Follosco as plaintiff against petitioner Toribia Lamagan and her husband Ambrosio Leonor (now deceased) as defendants in the lower court presided by respondent judge.[1] Follosco prayed of the lower court that it order defendants to vacate the 48-hectare portion of his land "illegally occupied" by them and to restore possession thereof to him. The disputed portion of land is part of several lots totaling over 500 hectares, of which Follosco is the registered owner by virtue of original certificate of title No. 178 issued by the Camarines Sur register of deeds in April, 1950.

In answer to Follosco's complaint, petitioner Lamagan and her late husband as defendants claimed that they and their predecessors-in-interest were in open and adverse possession of the property since 1890; that Follosco's title was acquired through fraud and deceit, and that the land should be deemed held in trust by Follosco for them; and that the suit was brought by Follosco "only after many years since he obtained his title thereto to hide from defendants' knowledge that the latter's land was in fact covered by (Follosco's) title".[2] As counterclaim, defendants prayed for the reconveyance of the disputed land to them on the theory that the same should be deemed as held in trust by Follosco for them.

The issues having been joined, Follosco as plaintiff presented through counsel his evidence, oral and documentary, and closed his case. Defendants then presented as their first witness petitioner's late husband in support of their defense and counterclaim for reconveyance. In the course of his direct examination by petitioner's counsel, Follosco's counsel objected to a question dealing with the ownership of the land and manifested a continuing objection to all similar questions which would elicit evidence of alleged ownership of defendants, on the ground that Follosco's title was already indefeasible and beyond judicial review.

The question was apparently extensively argued and respondent court adjourned the trial at noon and issued his three-page written resolution of August 15, 1966, ruling that any claims of defendants based on an alleged pre-existing right prior to the alleged fraudulent issuance of the title in favor of Follosco was already barred under

section 38 of Act 496 and that since no petition to reopen and review the decree of registration on the ground of fraud had been filed within one year from issuance of the decree, Follosco's title had become indefeasible and could no longer be attacked collaterally. Respondent court therefore ruled that "the court so resolves that all questions tending to elicit proof of ownership other than those which will prove a better and earlier issued Torrens Title duly registered in favor of the defendants or any of the defendants shall be barred and be not heard" and sustained Follosco's objection to defendants' line of questioning, holding that "(T)his court, without attempting to decide the case at its present stage, will, therefore, entertain from the defendants proofs and evidence which will indomitably (sic) show a better and earlier Torrens Title issued to the defendants, if there is any."

Petitioner-defendant claims that the effect of respondent court's questioned resolution was to totally prevent her from adducing at the trial any further evidence in support of her defense to the action for ejectment and of her counterclaim for reconveyance of the disputed land, such as her documentary evidence, allegedly consisting, inter alia, of a possessory information title in the name of one Mariano Lamagan dated November 21, 1891, deed of sale by Mariano Lamagan in favor of Nicolas Cambiado dated April 13, 1909, deed of sale by Nicolas Cambiado in favor of Leoncio Lamagan (petitioner's father) dated August 7, 1913, tax declarations, etc. Her motion for reconsideration having been denied by the trial court's order of September 29, 1966, she asked respondent court to suspend further proceedings in the case below pending her elevation of the disputed ruling for review by the appellate courts, and respondent court acceded accordingly.

Petitioner accordingly filed her petition for certiorari with the Court of Appeals,[3] which handed down its minute resolution of June 21, 1967, dismissing the same for failure to state a sufficient cause of action for the following principal reasons: "x x x (b) in the [respondent court's] resolution of August 15, 1966, the petitioner is permitted to present evidence which will indubitably show a better right; and (c) the issue does not appear to be within the ambit of a writ of certiorari." The appellate court in its August 2, 1967 resolution, denying petitioner's motion for reconsideration of its dismissal order, further noted that "the counterclaim for reconveyance has already prescribed (*J. M. Tuason & Co. Inc. vs. Adolfo Magangal*, G. R. No. L-15539, January 30, 1962)."

Hence, this appeal to which the Court gave due course on the strength of petitioner's urgent plea for relief from the "virtual refusal of the trial court to hear defendants in their defense, violative of due process."

The crux of the issues presented by petitioner-appellant in this appeal is basically procedural, with particular reference to the rules governing the admission or exclusion of evidence: did the appellate court commit any grave error, correctible by certiorari, in refusing to review on certiorari the trial court's disputed ruling in the case below rejecting petitioner's contested evidence and dismissing the petition filed for the purpose, on the principal ground that such ruling is an interlocutory matter and any question as to the correctness thereof does not fall "within the ambit of a writ of certiorari" and may only be reviewed on appeal taken from a decision rendered on the merits of the case.

The appellate court's dismissal of the petition was in full accord with the rules and applicable jurisprudence of the Court and must be affirmed.

1. As petitioner-appellant concedes in her petition and brief, it is beyond question that rulings of the trial court on procedural questions and on admissibility of evidence during the course of the trial are interlocutory in nature and may not be the subject of separate appeal or review on certiorari, but are to be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case. If the rule were otherwise, there simply would be no end to the trial of cases, for any litigant, not satisfied with the trial court's ruling admitting or excluding any proffered oral or documentary evidence, would then indefinitely tie up the trial while elevating the ruling for review by the appellate court.

2. Neither has petitioner made out a case for her claim that she should be permitted the special recourse of seeking a review of the trial court's ruling by certiorari, since it virtually ruled out all her evidence in support of her defense to the ejectment and of her counterclaim for reconveyance, and hence, appeal in due course was not an adequate re-medey.

The true and special function of writ of certiorari was defined by the Court in *Fernando vs. Vasquez*,^[4] thus: "A line must be drawn between errors of judgment and errors of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction renders an order or judgment void or voidable. Errors of jurisdiction are reviewable on certiorari; errors of judgment, only by appeal. Let us not lose sight of the true function of the writ of certiorari - 'to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction.' And, abuse of discretion must be so grave and patent to justify the issuance of the writ."

The Court likewise cited therein the exceptional case where certiorari had been entertained despite the existence of the remedy of an appeal: "But in those cases, either public welfare and the advancement of public policy so dictate, or the broader interests of justice so require, or the order complained of were found to be completely null and void, or appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointment of receiver"^[5] Thus, in *People vs. Abalos*,^[6] the Court granted as an exception a writ of certiorari against the trial court's ruling rejecting rebuttal evidence for the prosecution, pointing out that "once the accused has been acquitted, there is no means to secure a review by appeal, no matter how erroneous the action of the lower court may have been." No equally compelling reason has been advanced by petitioner as would place her case within the exceptions.

3. Petitioner may have reason in law to complain against the trial court's ruling that it would admit from her only evidence of "a better and earlier issued torrens title duly registered in favor of the defendants or any of (them)", since it merely held petitioner's one-year period to reopen the decree in favor of respondent Follosco on the ground of fraud to have already lapsed, but did not take into account petitioner's action in equity (by way of her counterclaim) for the reconveyance of the land on the principle of constructive trust. Such an action precisely concedes that the adverse party wrongfully succeeded in obtaining a torrens title but prays that such title should be ordered cancelled and reconveyed in favor of the claimant as the true beneficiary rightfully entitled thereto.

Assuming that the trial court erred in rejecting petitioner's proffered evidence, petitioner's recourse is clear under the long established rules, to wit, to make a formal offer of the evidence under Rule 132, section 35, stating on the record what a party or witness would have testified to were his testimony not excluded, as well as attaching to the record any rejected exhibits. The Court has long noted that "it is the better practice to untie with the record exhibits ... which have been rejected"^[7] and that such rejected or excluded exhibits "should have been permitted by the judge a quo to be attached to the record even if not admitted in evidence, so that in case of an appeal the court ad quem may thus be able to examine said exhibits and to judge whether or not their rejection was erroneous."^[8]

4. The validity of the cited rule, i.e. to bring up to the appellate court the rejected exhibits upon a proper appeal from a decision on the merits of the case, enabling the appellate court to examine all the exhibits and evidence of record and judge accordingly whether the trial court erred in rejecting the excluded exhibits was evident in the very case at bar. Here, petitioner sought to attach to the records here the exhibits which she intended to present to the trial court but were ruled out by it. Since there has been no decision rendered as yet by the trial court and respondent has denounced the proffered documents as "gross and careless forgery"^[9] which should be passed upon by the trial court in the first instance, the Court had to order said documents expunged from the records of the case at bar.^[10]

Again, respondent has cited the 1953 case of *Follosco vs. Director of Lands*,^[11] wherein the appeal of petitioner Lamagan and her other co-appellants (as homestead claimants) from the lower court's order denying their petition to set aside its judgment of August 27, 1948 declaring respondent Follosco the owner of the land subject of the registration proceeding was turned down by this Court. This fact places in grave doubt the veracity of petitioner's allegation that Follosco had sought to hide from her the fact of his having secured title to the land in question, and appears to provide ample justification for the appellate court's pronouncement in its August 2, 1967 resolution as to her counterclaim for reconveyance having "already prescribed."

At any rate, all these questions will have first to be necessarily passed upon and resolved by the trial court in the decision that it has yet to render - which serves but to demonstrate the impropriety and prematurity of petitioner's present action.

5. Finally, it seems in order, nevertheless, to reiterate the Court's admonitions to trial courts, as in *Abalos*,^[12] citing the 1929 case of *Prats & Co. vs. Phoenix Insurance Co.*,^[13] that "(I)n the course of long experience we have observed that justice is most effectively and expeditiously administered in the courts where trivial objections to the admission of proof are received with least favor. The practice of excluding evidence on doubtful objections to its materiality or technical objections to the form of the questions should be avoided. In a case of any intricacy it is impossible for a judge of first instance, in the early stages of the development of the proof, to know with certainty whether testimony is relevant or not; and where there is no indication of bad faith on the part of the attorney offering the evidence, the court may as a rule safely accept the testimony upon the statement of the attorney that the proof offered will be connected later." In other words, where there is no indication of bad faith on the part of the party offering the evidence or of a design to unduly prolong the trial, the Court has counselled trial courts to be liberal in accepting proffered evidence, since even if they were to refuse to accept the evidence, the affected party should nevertheless be allowed to spread the excluded evidence on the record, for review on appeal, as indicated in paragraph 3 *supra*.

As pointed out in *Prats*, *supra*, "the admission of proof in a court of first instance, even if the question as to its form, materiality, or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final consideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prosecuted to the Supreme Court upon appeal, this court then has all the material before it necessary to make a correct judgment."

In any event, should the trial court exclude evidence that it deems clearly irrelevant and inadmissible, it should not - in the absence of an injunction order from the appellate courts or of strong compelling reasons above indicated - order the suspension of the trial pending the outcome of any recourse sought by the affected party from the higher courts but should continue with the trial and render in due course its judgment, which may then be properly appealed from. Needless delay in the trial and determination of the case would thus be avoided, unlike in the case at bar where the trial court erroneously acceded to suspending the trial below pending the outcome of this proceeding. It should be sufficient in such cases that the trial court afford the affected party a reasonable period and opportunity to secure from the higher courts a preliminary injunction order against the continuation of the trial, and thereafter proceed with the trial and judgment of the case upon the party's failure to secure such injunctive order.

ACCORDINGLY, the resolution appealed from is hereby affirmed and the petition is dismissed. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Dizon and Castro, JJ., on official leave.

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- [1] Civil Case No. 5672, entitled "Cosme Follosco, plaintiff vs. Ambrosio Leonor, et al., defendants."
- [2] Petition, Rollo, p. 4.
- [3] CA-G.R. No. 39499-R, entitled "Toribia Lamagan vs. Hon. Rafael dela Cruz, CFI-Judge-Camarines Sur and Cosme O. Follosco."
- [4] 31 SCRA 288, 292 (Jan. 30, 1970); emphasis supplied.
- [5] *Idem*, at p. 294.
- [6] 30 SCRA 599 (Nov. 28, 1969), and cases cited.
- [7] *U. S. vs. Cabaraban*, 36 Phil. 251 (1917).
- [8] *Benusa vs. Torres*, 55 Phil. 737 (1931); see also *Velez vs. Chavez*, 50 Phil. 676 (1927); 6 *Moran's Rules of Court* 1970 Ed. pp. 120-121.
- [9] E.g. an alleged deed of sale executed on August 7, 1913 in favor of Leoncio Lamagan, and allegedly inscribed in accordance with Act 3344 which was enacted only on December 8, 1926.
- [10] Resolution of July 9, 1968, Rollo, p. 77.
- [11] Reported in 92 Phil. 810 (Mar. 23, 1953).
- [12] 30 SCRA 599 and cases cited.
- [13] 52 Phil. 807.

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