

**WILLIAM P. ONG, PETITIONER, DATU UMPA, NATANAMAN UMPA
PADATE AND HON. JUDGE ALAN FLORES, PRESIDING JUDGE OF
REGIONAL COURT OF LANA DEL NORTE, BRANCH 7,
RESPONDENTS.**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

For Resolution is petitioner's Motion for Reconsideration[1] filed on September 17, 2012, praying that Our Decision[2] promulgated on July 6, 2012 dismissing the instant petition be reconsidered and set aside.

After a circumspect evaluation of the grounds relied upon by the petitioner, this Court finds no strong and cogent reason to set aside its earlier Decision. The reasons and arguments set forth by the movant are basically reiterations of what this Court had already amply and exhaustively discussed and ruled upon in its Decision dated July 6, 2012 which quoted below:

“Section 1, Rule 65 of the Rules of Court reads:

Petition for certiorari – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Under the aforequoted section, certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. The phrase “without jurisdiction” means that the court acted with absolute want of jurisdiction whereas the phrase “excess of jurisdiction” means the court has jurisdiction but has transcended the same or acted without any statutory authority.[3] Likewise, “grave abuse of discretion” denotes such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an invasion of positive duty or virtual refusal to perform a duty enjoined by law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[4]

In the first assailed order dated October 6, 2006, public respondent judge granted the Motion for Issuance of Special Order of Demolition after giving petitioner the opportunity to submit his opposition. Public respondent judge ordered petitioner William Ong, Noel Faunillans, their agents and subalterns to vacate the lands described under Lot 340 since the rightful ownership of private respondents as plaintiffs in the civil case has been established. According to the public respondent judge, the vendors of the lots, Lot 340, Lot 340-C and Lot-340-D, were not the declared owners so that the sale to petitioner’s wife could not have conveyed any right upon her over

the subject lots. For instance, the deed of sale of Lot 340-D was not executed by Supremo Mainar, the declared owner, but by Concordia Vda. Mainar, Annie Resullar, etc. The deed of sale of Lot 340-C was also not executed by the declared owners (heirs of Gregorio Tumapon) but by Guillerma Mainar.

Public respondent judge mentioned in the said order that the petitioner and the Faunillans did not exercise the procedure under Section 16, Rule 39 of the Revised Rules of Court. The reference to Section 16, Rule 39 might have been misplaced because the section contemplates of a property that is being levied upon but which is claimed by a person other than the judgment obligor. This is not so in the civil case filed by private respondents, which is for recovery of possession of Lot 340. However, this erroneous reference of Section 16, Rule 39 does not depart from the fact that private respondents sought for the execution of the final judgment by the court a quo rendered in their favor. The well-settled rule is that such an error cannot be corrected by way of a certiorari petition. Certiorari is not available to correct errors of procedure or mistake in the findings and conclusion, nor will it issue to cure error in proceedings or to correct erroneous conclusions of law or fact.[5]

In the second assailed order dated February 5, 2007, public respondent judge denied the Motion for Reconsideration of petitioner William Ong and Elmer Faunillan. Public respondent judge stated that the order dated October 6, 2006 and the writ of demolition dated November 3, 2006 could now be enforced against oppositors Ong, Faunillan, including against Mainars or Maynars, who did not oppose the writ of execution, and also to include their agents, representatives, hired workers, privies, instrumentalities and subalterns. In the said order, public respondent judge mentioned of exceptions to the rule that third persons not party to the case are not bound by the decisions of the court. These exceptions include transferees pendente lite and privies of parties to the case.

We note that public respondent judge identified the vendor Ramon Enguio and Gregorio Tumapon (predecessor in interest of the other vendor Guillerma Mainar) as relatives of Camilo Gumisad, one of the defendants in the civil case. The sale of Lot 340, Lot 340-C and Lot 340-D occurred on 24 May 1986,[6] 23 February 1988[7] and on 5 December 1990,⁸ respectively when Civil Case No. 07-33 was still pending before the court a quo. The civil case was later decided on September 25, 1995 in favor of the private respondents. The reasonable deduction is that just as the relatives of defendant Camilo Gumisad are bound by the adverse decision of the court a quo so too, are petitioner and his wife/vendee who acquired the lots from the former during the pendency of the civil case. In the questioned order, public respondent judge considered oppositors (petitioner and Faunillan) as transferees pendente lite who stand on equal footing with the vendors.

The Supreme Court has declared in a number of decisions that a transferee pendente lite stands in exactly the same position as its predecessor-in-interest, the original defendant and is bound by the proceedings had in the case before the property was transferred to it. It is a proper but not an indispensable party as it would in any event be bound by the judgment against his predecessor. This would follow even if it is not formally included as a defendant through an amendment of the complaint.[9]

We quote with approval, the pertinent portion of the questioned order dated February 5, 2007 by the public respondent judge:

“It is well settled that although an ejectment suit is an action in personam wherein the judgment is binding only upon the parties properly impleaded and given an opportunity to be heard, the judgment becomes binding on anyone who has not been impleaded, if he or she is: (a) a trespasser, squatter or agent of the defendant fraudulently occupying the ‘property to frustrate the judgment; (b) a guest or occupant of the premises with the permission of the defendant; (c) a transferee pendent lite; (d) a sub-lessee; (e) a co-lessee; or (f) a member of the family, relative or privy of defendant. (Sunflower Neighborhood Association v. CA G.R No. 136274. September 3, 2003, Guevara Realty Inc v. CA 160 SCRA 470, Oro Cam Enterprises, Inc v. CA 319 SCRA

444, Equitable PCI Bank v. Rosita Kho G.R No. 142950, March 26, 2001).

It is however an undeniable fact that Ong and other oppositors are transferees pendente lite and they stand in equal footing with the transferor and should respect any judgment rendered for or against a party and their transferor and pursuant to the cited decisions above afforded them no special protection in law (Toledo-Banaga v. Court of Appeals G.R No. 127941, January 28, 1999; Yu v. Court of Appeals, G.R No. 109078 (1995), Director of Lands v. Martin, 84 Phil 140 (1949), Tuason v. Reyes and Siochi 48 Phil 844 (1926).

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Under Sec. 20 (now Sec.21) Rule 3, Revised Rules of Court, a Transferee PENDENTE LITE does not have to be included or impleaded by name in order to be bound by the judgment because the action or suit maybe continued for or against the original party or the transferor and still be binding on the transferee.

For emphasis, Gregorio Tumapon is the father of Cayetana Tumapon and the latter is the wife of defendant Camilo Gumisad (see page 10, September 25, 1995 of the decision). Oppositor Ong admitted that he served as mayor of Baroy, Lanao del Norte for several years because of that he knew Ramon Enguio to be the nephew of defendant Camilo Gumisad, his mother being the sister of the late Mariellana Gumisad. Thus Gregorio Tumapon and Ramon Enguio fit the category of defendant Camilo Gumisad relatives, agents and or as privies to him. The oppositors did not dispute the relationship of defendant Gumisad and Gregorio Tumapon. Thus, Gregorio Tumapon and any party whose rights maybe traceable/pointed out to him as the source thereof is bound by the subject decision of this Court September 25, 1995 xxx Oppositor Ong's source of right with respect to Annexes "B" and "C" also pointed to Gregorio Tumapon. Again, it bears emphasis that the supposed transferor as per Annexes "A" and "C" are defendant's Gumisad's relatives, agents or privies. In Annex "B" the supposed transferor is in the category of a stranger and he was not an owner of the land subject to the supposed deed of sale and the transferee. Therefore did not have a better right than the supposed transferor. Oppositor Ong knew of this fact because he had been a long time mayor of Baroy, Lanao del Norte and is supposed to know likewise the pending case between defendants and plaintiff affecting the land in controversy. Prescription will not lie as a matter of assertion by oppositors. As correctly observed by plaintiffs the case involved is treated as "accion in personam" and may be enforced against a party who is not impleaded, being transferee pendet elite (sic) or categorized as defendants agents, relatives privies or representatives, like oppositors thereof. . . ."

Thus, We find that public respondent judge did not act without jurisdiction or in excess of jurisdiction when he issued the questioned orders including the writ of demolition dated November 3, 2006. Neither did public respondent judge act with grave abuse of discretion when he held that Civil Case No. 07-33 is binding upon petitioner who is a transferee pendente lite. The orders were issued by the public respondent judge in the exercise of jurisdiction and in accordance with due process and fair play. Certiorari implies an indifferent disregard of the law, a decision arrived at without rational deliberation.[10] The allegation of grave abuse of discretion must be proved, or at least shown prima facie, to justify procedure.[11]

Given the facts and circumstances of the instant case, We are convinced that the public respondent judge ruled correctly to order petitioner to vacate Lot 340. There is no basis to grant petitioner the special civil remedy of certiorari so as to exclude him in the enforcement of the writ of demolition that is based on the final and executory judgment. The ruling in Cortez v. Villaluz,[12] is pertinent. Where the petition for certiorari was obviously intended to frustrate the judgment by delaying execution, it cannot be granted.

WHEREFORE, the instant petition is DISMISSED."

ACCORDINGLY, the motion for reconsideration is hereby DENIED.

SO ORDERED.

Camello, J., Chairperson and Badelles, JJ., concur.

[1] Rollo, p. 210.

[2] Rollo, p. 196.

[3] Leung Ben v. O'Brien, 38 Phil 182; Salvador Campos y Cia v. del Rosario, 41 Phil 45.

[4] Searth Commodities Corporation v. Court of Appeals, G.R. No. 64220, 31 March 1992, 207 SCRA 622, S & A Gaisano Incorporated v. Judge Hidalgo, G.R. No. 80397, 10 December 1990, 192 SCRA 224; Government Service Insurance System v. Judge Florendo, No. L-48603, 29 September 1989, 178 SCRA 76; Genoblazo v. Court of Appeals, G.R. No. 79303, 20 June 1989, 174 SCRA 124; Belisle Investment and Finance Co. v. State Investment House, Inc., G.R. No. 71917, 30 June 1987, 151 SCRA 630; Yaptinchay v. Judge Torres, No. L-26462, 9 June 1969, 28 SCRA 489; Detective & Protective Bureau, Inc. v. Judge Cloribel, No. L-23428, 29 November 1968, 26 SCRA 255; North Negros Sugar Co. v. Hidalgo, 63 Phil. 664 (1936).

[5] De Vera v. Pineda, G.R. No. 96333, 2 September 1992, 213 SCRA 434.

[6] Annex "D" to Petition, Rollo, page 38.

[7] Annex "E" to Petition, Rollo, pages 39-40.

[8] Annex "F" to Petition, Rollo, page 41.

[9] Fatalino v. Sanz, 44 Phil 691; Asociacion de Agricultoras de Talisay Silay Inc. v. Silay Milling Co, Inc.; 88 SCRA 294; Jocson v. Court of Appeals, G.R. No. 88297, March 22, 1990, 183 SCRA 589; see also Elido v. Court of Appeals, G.R. No. 95446, March 16, 1992.

[10] State Prosecutor and Special Prosecutor on SSS Cases in Region V v. Hon. Pablo M. Paqueo, Jr., G.R. No. 150666, June 7, 2007.

[11] Tan v. Intermediate Appellate Court, 164 SCRA 130; Purefoods Corp. v. NLRC, 171 SCRA 415; Vide Commission of Internal Revenue v. CA, 257 SCRA 200.

[12] Cortez v. Villaluz, 24 SCRA 146.

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