

**PETRONIO COLLADO AND ROMUALDA COLLADO, PETITIONERS, VS.
HON. HAROLD M. HERNANDO AS PRESIDING JUDGE, BRANCH I,
COURT OF FIRST INSTANCE OF ABRA, JUANITO F. GO, MAY V. GO,
AGRIPINO...**

G.R. No. L-43866. May 30, 1988

Ponente: CORTES, J.

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CORTES, J.:

At the outset, it must be emphasized that the facts are in dispute and, thus, a trial should have been conducted by respondent judge to ascertain the true facts. A finding of grave abuse of discretion is therefore inevitable. But for reasons to be stated later, this Court is constrained to hold that, under the circumstances, the writ of certiorari shall not issue.

From the record, the following may be deduced.

On January 16, 1976, petitioners filed a complaint for recovery of possession and ownership against private respondents, alleging that they were the owners of a parcel of residential land situated in Bangued, Abra described and declared under Tax Declaration No. 23174 in the name of petitioner Romualda Mailed Collado, petitioners having purchased the same from Bonifacia Collada on March 20, 1952 and since then had been in the possession of the land until November 1975, when private respondents spouses Go occupied the same.

In their answer, private respondents claimed that the land formerly belonged to Maria Barreras who sold it in 1942 to respondents-spouses Brillantes who since then took possession thereof until November 1975 when they sold the land to the spouses Go.

Following a pre-trial conference, respondent judge issued a pre-trial order dated March 17, 1976, the dispositive portion which reads:

WHEREFORE, as prayed for by Atty. Agripino Brillantes and in behalf of his co-defendants, they are hereby given a period of 15 days from today to submit their documentary evidence in support of their defense and Atty. Paterno Aquino for the plaintiffs is likewise given a period of 15 days from today to submit their additional documentary evidence, after which, with or without said documentary evidence, the pre-trial conference closed and terminated and that the parties by representation of their respective counsels finally agreed to submit the case for decision, hence, this Court, thereafter, shall consider the same submitted for decision. [Rollo, p. 17].

Said order also stated:

This court therefore ordered the parties to agree on some undisputed facts already appearing in their pleadings and they agreed as follows:

- That the parties have the capacity to sue and be sued;

- That the parties agreed that the property in question is a residential land located in the poblacion of Bangued, Abra, bounded on the north by Maura Felisco; on the east by National Road; on the south by Federico Villamor before but now Benjamin Aznar; and on the west by Wencesla Valera de Banez according to the plaintiffs, and Presentacion Bersamin according to the defendants;
- That the approximate area of the residential lot in question is, according to the plaintiff, 207 square meters, while according to the defendants, it is 300 sq. meters, more or less;
- That the party who will lost (sic) in this case shall pay for attorney's fees in the amount of P1,000.00 to the winning party. [Rollo, pp. 13-14].

* * *

This court further inquired from the plaintiffs, thru counsel. Atty. Paterno Aquino, if what is (sic) the subject matter of the oral evidence they would intend to present, in this case and Atty. Aquino stated that the land in question originally belonged to Andres Collado, now deceased, who had been in actual, open, public, continuous, uninterrupted, peaceful and adverse possession in the concept of owner for a period of more than 30 years including the possession of his predecessor in interest; that after the death of Andres Collado, the property was inherited by Bonifacia Collado who continued the possession in the same manner as that of Andres Collado in the concept of owner; that in 1952, said Bonifacia Collado executed a deed of sale in favor of the spouses Petronio Collado and Romualda B. Mailed covering the land in suit. . . . that since the time of the purchase up to the present, they have been in actual, peaceful, continuous and adverse possession of the land in question in the concept of absolute owner and that they have paid the realty taxes . . .

. . . This court likewise asked the defendants, thru Atty. Brillantes, the nature or subject matter of their oral evidence and he informed the court as follows:

That the property in question formerly belonged to Maria Barreras having been in possession of the property for more than 20 years before 1942; that the same Maria Barreras sold the said property to the spouses Atty. and Mrs. Agripino Brillantes; that the document of sale was notarized by the late Atty. Abraham Cardenas and it was duly registered in the Office of the Register of Deeds of Abra but all public records were burned during the bombing of the town of Bangued on March 10, 1945 so that said document is not now available; that the vendees Agripino Brillantes and Juliana Balmaceda-Brillantes occupied the property physically by allowing Julia Bigornia and Jose Bambilla to stay on the lot until it was sold to the herein defendants Juanito F. Go and May Valera-Go on October 1, 1975; that after the property was sold to the defendants Mr. and Mrs. Juanito F. Go, the house of Jose Bambilla and Julia Bigornia was removed and another house of strong materials was constructed by defendants Mr. and Mrs. Juanito F. Go valued at P110,000.00 but is still incomplete; that the lot in question has been mortgaged by the defendants Mr. and Mrs. Juanito F. Go with the Development Bank of the Philippines in the amount of P44,000.00; that Andres Collado and Maria Barreras were common-law husband and wife as they were not legally married and that Bonifacia Collado never occupied the property because she had not been in Bangued for a long time now but defendant Agripino Brillantes was informed that said Bonifacia Collado is presently in Manila. [Rollo, pp. 14-16; Underscoring supplied].

On April 21, 1976, the trial court rendered judgment, without trial on the merits, dismissing the complaint on the basis of the documentary evidence submitted for marking and the manifestation of the parties respective counsels as to what they intend to prove through the oral evidence they will present.

On April 30, 1976, petitioners filed in the trial court a "Motion for Modification of Order and To Set Aside Judgment" alleging that their counsel made no representation agreeing to consider the case submitted for decision. The court (denied the motion in an order dated May 14, 1976 for lack of interest to prosecute the same as

petitioners and their counsel failed to appear during the hearing on the motion. Petitioners moved to reconsider the order but the same was denied.

Hence, petitioners filed the instant special civil action for certiorari with this Court to annul the pre-trial order dated March 17, 1976 issued by respondent judge as well as his decision dated April 21, 1976, alleging grave abuse of discretion.

In a resolution dated June 2, 1976, the Court commented that it was "not inclined to sanction the rendition of a judgment based on nothing more than mere representations of the parties of what they intend to prove, without actually presenting their oral evidence particularly where, as in the instant case, it is evident that their factual theories contradict each other." (Rollo, p. 45). This observation was reiterated by the Court in resolutions dated August 4, 1976 [Rollo, p. 56] and October 6, 1976 [Rollo, p. 67].

Subsequently, in his rejoinder received by the Court on August 25, 1976, respondent judge manifested to the Court that petitioners had appealed his decision to the Court of Appeals [Rollo. pp. 58-65]. This fact was not disclosed by petitioners in their petition. The appeal was docketed as CA-G.R. No. 59738-R.

After petitioners waived their right to file a memorandum, private respondents adopted respondent judge's rejoinder as their memorandum and respondent judge filed his memorandum, the case was submitted for decision on February 7, 1977.

In the meantime, the Court of Appeals had been regularly inquiring from this Tribunal about the status of the instant case [Rollo, p. 90 et seq.]

There is no dispute that the procedure followed by respondent judge in hearing and deciding the case was not in accord with the procedure prescribed by the Rules of Court. The pertinent section of the Rules of Court could not be more specific:

Sec. 2. Agreed statement of facts. -The parties to any action may agree, in writing, upon the facts involved in the litigation, and require judgment of the court upon the facts agreed upon, without the introduction of evidence.

If the parties can agree only on some of the facts in issue, trial shall be held as to the others. [Rule 30; Underscoring supplied].

As the parties have already agreed on some facts, trial should have been held on the disputed factual issues. Respondent judge, however, adopted a procedure not sanctioned by the Rules of Court. In lieu of hearing the testimonies of the witnesses of the parties on the disputed facts, he proceeded to render a decision on the basis of the documentary evidence submitted by the parties for marking as exhibits and their respective counsel's manifestation regarding the gist of the testimonial evidence they intend to introduce during the trial. The exhibits have not yet even been formally offered, much less admitted in evidence. Thus, they could not be considered by the court [Rule 132, Sec. 35].

However, in spite of the irregularity of the procedure followed by respondent judge, this Court holds that the issuance of the writ of certiorari is not proper.

A more fitting factual backdrop that would call for the reiteration of the rule that essential to the issuance of the writ of certiorari is that there be no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law available to the petitioner [Rule 65, Sec. 1] could not be found. In this case, the exigency requisite to the issuance of the writ does not obtain. The remedy of appeal is available, as in fact an appeal was filed by petitioners in the Court of Appeals.

Perhaps this is the reason for petitioners' failure to state in their petition the jurisdictional allegation that "there is

no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law."

This Court frowns upon petitioners' omission in not disclosing to the Court that an appeal had been filed in and was pending before the Court of Appeals. Information on the existence and status of the appeal only came out in respondent judge's rejoinder. Thereafter, unable to deny its existence, petitioners reasoned out "that the present civil action has not become moot and academic by said appeal because the appeal is still pending before the Court of Appeals and a long way to termination of the same including possible appeal from said court to this Court. On the contrary, the grant of the writ of certiorari prayed for in the present special civil action would render moot and academic the aforesaid appeal." [Rollo, p. 71]. This is classic case of forum-shopping which this Court definitely cannot and will not countenance. What aggravates petitioners' case is that they chose to trifle with the highest court of the land.

WHEREFORE, the petition is hereby DISMISSED. Counsel for petitioners, Atty. Paterno Aquino, is ADMONISHED for forum-shopping and trifling with the jurisdiction of this Court. He is WARNED that any further misconduct will be dealt with more severely. Let a copy of this decision be appended to the record of Atty. Aquino.

Respondent judge is REMINDED to comply faithfully with the procedure provided in the Rules of Court. Let a copy of this decision be appended to his record.

As the appeal in CA-G.R. No. 59738-R is pending in the Court of Appeals, and said Court has desisted from acting on the case before it pending disposition of the case by this Tribunal, let a copy of this Decision be immediately sent to the Court of Appeals to enable said Court to dispose of the case with deliberate dispatch.

Treble costs against petitioners.

This decision is immediately executory.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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