

J. KINGS & SONS COMPANY, INC., PETITIONER, VS. HON. THELMA CANLAS TRINIDAD- PE AGUIRRE, AS PRESIDING JUDGE OF RTC-BRANCH 129, CALOOCAN CITY, THE REGISTER OF DEEDS OF CALOOCAN CI...

Ponente: BARZA, J.

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BARZA, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, filed by herein petitioner J. King & Sons Company, Inc., (hereinafter referred to as “petitioner”) which seeks to annul and set aside the Summary Judgment[2] dated June 3, 2013, rendered by herein public respondent Hon. Judge Thelma Canlas Trinidad-Pe Aguirre, in Civil Case C-23044 and its Order[3] dated September 25, 2013, denying the Motion for Reconsideration of the said decision, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

THE FACTS

The present case stemmed from a Complaint for Declaration of Nullity of Title and Recovery of Possession, Injunction and Sum of Money[4] filed by herein private respondent LCM Theatrical Enterprises, Inc. (LCM) against petitioner, the Register of Deeds of Caloocan City, John Doe and Richard Roe which was docketed as Civil Case No. C-23044 and raffled to Branch 129 of the Regional Trial Court of Caloocan City presided by herein public respondent Hon. Judge Thelma Canlas Trinidad-Pe Aguirre (public respondent). The subject matter of the case was a parcel of land located in McArthur Highway cor. Calle Uno, Caloocan City (subject property) and covered by Transfer Certificate of Title (TCT) No. T-111236 of the Register of Deeds of Caloocan.

In its complaint, LCM alleged that the subject property was previously the subject matter of another case filed by it against a certain Eleuteria Rivera (Rivera) entitled “LCM Theatrical Enterprises, Inc. vs Eleuteria Rivera, Brisbane Realty Corp., John Doe and the Register of Deeds of Caloocan” after its possession was disturbed by the latter on the strength of her title, TCT No. C-314535, which originated from OCT No. 994 issued on April 19, 1917. Rivera's title was then bought by therein respondent Brisbane Realty Corp. (Brisbane) but it never obtained a title under its own name. The case filed by LCM was for Quieting of Title which was docketed as Civil Case No. C-491. LCM alleged therein that Rivera's title was a forgery since it was derived from OCT No. 994 issued on April 19, 1917, which was declared by the Supreme Court as null and void and all titles derived therefrom in the consolidated case of Manotok Realty Inc. v. CLT Realty Development Corporation and Araneta Institute of Agriculture, Inc. v. Heirs of Jose B. Dimson (Manotok Case). LCM then claimed that a Summary Judgment was rendered in its favor by the RTC in the above-mentioned case on September 23, 2010, which was followed on October 7, 2010 by a Decision which was likewise in its favor. Brisbane appealed this Decision to the Court of Appeals where the same is presently pending. LCM, however, claimed that it was able to obtain an order of Execution pending the appeal of the case.

LCM, however, found out during the execution of the Decision against Rivera and Brisbane that there were

guards posted on the subject property which LCM claims prevented it from reclaiming possession of the subject property. LCM initially thought the guards posted at the subject property was Brisbane's but it learned subsequently that they belonged to herein petitioner, J. King and Sons Company, Inc.

LCM then alleged that it sent to petitioner a letter of demand wherein it stated to petitioner that its occupancy of the subject property is by virtue of TCT No. C-363610 which is a forgery because the Register of Deeds has certified that the said title is in fact in another owner's name and covered a different property. Furthermore, the title of the seller, TCT No. C-361988, from which petitioner derived its certificate of title is a derivative of OCT No. 994 issued on April 19, 1917 which, as earlier mentioned, was annulled by the Supreme Court in the Manotok Case. In response to the said letter, petitioner replied that it is a buyer in good faith and for value of the subject property. LCM also claimed that petitioner appended to its letter its title, TCT No. 363 10. According to LCM, petitioner emphasized that there is a space between "3" and "10" in the said letter. Petitioner also allegedly provided LCM in the same letter with copies of the titles from which its title, TCT No. 363 10, was derived.

Not satisfied by the explanation given, LCM filed the above-mentioned complaint against petitioner for declaration of nullity of title against petitioner.

For its part, petitioner specifically denied in its Answer[5] that LCM is the owner of the subject property and that the source of the latter's title, TCT No. T-111236, is unknown and may have been acquired under questionable circumstances. Petitioner also stated that it was not a party to the earlier Quieting of Title case filed by LCM against Rivera and Brisbane and therefore cannot be bound by the decision made in the said case. Petitioner claims it acquired the subject property for value and in good faith pursuant to and by virtue of a Deed of Sale executed by it and the owners of the subject property, the Heirs of the Maysilo Estate. Consequently, it has acquired vested rights over the subject property and cannot be deprived of its ownership over the same by reason of the case mentioned by LCM. Likewise, petitioner also claims that it was not a party to the Manotok Case decided by the Supreme Court and consequently any pronouncement made therein by the High Court has no binding effect on it. Lastly, petitioner also denied LCM's allegation that its title is a forged title and claimed that it was actually LCM's title, TCT No. T-111236, which came from a spurious source as the same was derived merely from Caloocan Cadastral Survey No. 34, unlike its title, TCT No. 363610, which was derived from OCT No. 994.

During the proceedings in Civil Case No. C-23044, LCM filed a Motion for Summary Judgment,[6] claiming there is no need to prolong the adjudication of rights of the parties here as there is no genuine triable issue of any material fact in the said case as borne out by the allegations in the complaint and the defenses raised in the answer. LCM claimed that petitioner referred to its title as TCT No. 363610 in the body of its Answer in paragraph 20. These title has been certified by the Register of Deeds to be in the name of Sabas Capili, et. al. and covers a different property located in the Barrio of Calimanapa and Balintawak, Caloocan City. The Register of Deeds has likewise certified that the said title has already been cancelled and no longer existing. Furthermore, petitioner also admitted that its title was derived from OCT 994, which was issued on April 17, 1917. LCM alleged that the said title and any title that traces its source thereto was declared null and void by the Supreme Court in the Manotok Case.

The said motion was granted by public respondent and a Summary Judgment dated June 3, 2013 was rendered in favor of LCM, the dispositive portion of which states as follows:

"Wherefore the Court hereby:

- Declare Defendant J. King's 'TCT No. 363610 or TCT No. 36310' Null and Void;
- Orders defendant King to surrender the subject property to Plaintiff;

- Orders defendant (sic) King to pay Plaintiff rentals for occupying the subject property in the amount of Php500,000.00;

- Orders defendant J. King to pay Plaintiff attorney's fees in the amount of Php500,000.00.

Cost against Defendants.

SO ORDERED.”[7]

Petitioner filed a Motion for Reconsideration to assail the said judgment but the same was denied by public respondent in an Order[8] dated September 25, 2013.

Hence this petition.

ISSUES

Petitioner raises the following issues for Our resolution, to wit:

I.

THE PUBLIC RESPONDENT COMMITTED SERIOUS AND GRAVE REVERSIBLE ERROR WHEN IT GRANTED THE PRIVATE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DESPITE LACK OF SUPPORTING AFFIDAVITS, DEPOSITIONS AND ADMISSIONS TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION.

II.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION SO GROSS THAT IT AMOUNTED TO LACK OR IN EXCESS OF JURISDICTION WHEN IT GRANTED PRIVATE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DESPITE THE EXISTENCE OF GENUINE AND MATERIAL FACTUAL ISSUES WHICH REQUIRE A FULL BLOWN TRIAL PROCEEDINGS.

III.

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LOSS OF JURISDICTION WHEN IT GRANTED PRIVATE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT WITHOUT A HEARING.[9]

RULING OF THE COURT

Essentially, the issues being raised by petitioner may be reduced into one: whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent when it granted LCM's motion for summary judgment.

The petition is not meritorious.

Special Civil Action for
Certiorari

In the instant case, petitioner ascribes grave abuse of discretion on the part of public respondent for granting LCM's motion for summary judgment as there is a triable and genuine issue in the present case involving the title of LCM over the subject property which needs to be heard and litigated by the court a quo. Regarding this issue, petitioner claims LCM title was derived from a cadastral survey which was performed at a time when the subject property was already decreed and registered under OCT 994, the title from which petitioner claims its certificate of title has been derived. Furthermore, petitioner also claims that it made inquiries with the Register of Deeds and

asked for a copy of TCT No. T-103549/T-514, the title which was cancelled and gave rise to the issuance of LCM's title, but the record's officer of the Register of Deeds certified that the same cannot be located thus allegedly giving rise to the conclusion that the issuance of LCM's title was made under suspicious circumstances. There was also allegedly grave abuse of discretion on the part of public respondent in granting LCM's Motion for Summary Judgment according to petitioner as the latter granted the said motion without conducting a hearing and despite the lack of supporting affidavits, depositions and admissions by LCM to support the same.

For its part, LCM contends that the summary judgment issued by public respondent was a final judgment as it finally disposes of the proceedings in Civil Case No. C-23044 and leaves nothing more for the court therein to do in respect thereto. LCM thus argues that petitioner should have appealed the said judgment instead of filing a petition for certiorari under Rule 65. The period to appeal the summary judgment rendered by public respondent, however, has already expired as petitioner failed to file its notice of appeal within 15 days from receiving the Order of the court a quo denying its motion for reconsideration. Citing the case of *Mercado v. Court of Appeals*,^[10] LCM argues that the present petition for certiorari should be dismissed as it cannot be used as a substitute for the lost remedy of appeal.

We agree with LCM.

As expressly provided under Section 1 of Rule 65 of the Rules of Court,^[11] a petition for certiorari may be properly resorted to if a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of 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. This is the reason why the said petition is referred to as an "extraordinary" remedy.^[12] Being considered a limited form of review and a remedy of last recourse, a petition for certiorari is issued only under closely defined grounds and procedures.^[13] It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, since a petition for certiorari is not a substitute for a lapsed or lost appeal.^[14] Where an appeal is available, a petition for certiorari will not prosper, even if the ground therefor is grave abuse of discretion.^[15]

Thus, in the case of *Federation of Free Workers v. Inciong*,^[16] the Supreme Court held:

"While the special civil action of certiorari may be availed of in the alternative situation where an appeal would not constitute a plain, speedy, and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, certiorari cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error."

In the present case, the record of the case shows that petitioner received the Order of the RTC denying its Motion for Reconsideration of the Summary Judgment dated June 3, 2013 on October 3, 2013. Petitioner therefore has 15 days from the said date or until October 18, 2013 to file its Notice of Appeal of the said judgment before the same becomes final. Petitioner, however, allowed the said period to expire without filing any appeal and instead chose to file the present petition for certiorari on November 28, 2013, more than one month from the date the Summary Judgment attained finality. The present petition for certiorari should therefore be dismissed as it is clear petitioner is merely filing the same as a substitute for its lost appeal.

Furthermore, assuming *arguendo* that the procedural rules can be relaxed in this case, a perusal of the records still fails to show any grave abuse of discretion was committed by public respondent in granting LCM's motion for summary judgment and thereafter rendering the same.

Proprietary of the
Summary Judgment

Summary judgment is sanctioned in this jurisdiction under Section 1, Rule 35 of the 1997 Rules of Court which provides as follows:

SECTION 1. Summary judgment for claimant. - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Summary judgment is proper when there is clearly no genuine issue as to any material fact in the action or where the material allegations in the pleadings are not disputed by the parties.[17] The theory of summary judgment is that, although an answer may on its face appear to tender issues requiring trial, if it is demonstrated by affidavits, depositions or admissions that those issues are not genuine but sham or fictitious, the Court is justified in dispensing with the trial and rendering a summary judgment.[18]

In the instant case, based on the pleadings submitted by petitioner during the proceedings before the court a quo, petitioner has repeatedly admitted that its claim over the subject property is anchored on the validity of OCT No. 994 issued on April 19, 1917, the title from which its certificate of title was allegedly derived from. In a nutshell, the bone of petitioner's contention is that its title and ownership over the property is superior to that of LCM's as the latter derives its title from a Cadastral Survery No. 34 conducted on December 1, 1930 to August 1, 1932. Since as stated above, OCT No. 994 was issued on April 19, 1917, petitioner argues that the title of LCM is void as the subject property cannot again be the object of registration once the property had become the subject of an earlier registration.

However, in the consolidated case of Manotok Realty Inc. v. CLT Realty Development Corporation and Araneta Institute of Agriculture, Inc. v. Heirs of Jose B. Dimson,[19] the Supreme Court has already expressly declared that OCT No. 994 dated April 19, 1917 and all titles derived therefrom are void, viz:

"From the foregoing evaluation and in conformity with the Supreme Court 2007 Resolution, this Court arrived at the following conclusions as to the status of the original title and its subsequent conveyances:

- As categorically declared by the Supreme Court, there is only one OCT 994, the registration date of which had already been decisively settled as 3 May 1917 and not 19 April 1917. OCT 994 which reflects the date of 19 April 1917 as its registration date is null and void.
- In view thereof and in addition to other grounds we have already discussed, the certificates of title of the deceased Jose Dimson and his successor-in-interest, CLT, having traced back to OCT 994 dated 19 April 1917, are NULL and VOID and thus vest no legal right or claim in favor of Dimson and CLT.

x x x x"

Based on the foregoing pronouncement by the Supreme Court, it readily appears that the fact of the invalidity of the title of petitioner over the subject property has clearly been established without any need of presentation of evidence by both parties. Clearly, no grave abuse of discretion can be ascribed on public respondent for granting LCM's motion for summary judgment and for thereafter rendering a decision favorable to LCM. As held by the Supreme Court in Reyes v. COMELEC,[20] "grave abuse of discretion" under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross. Since there was clearly no genuine issue in the present case in light of petitioner's admission that it traces its title over the the subject property from OCT No. 994 dated April 19, 1917, We fail to find any grave abuse of discretion manifested by public respondent in granting

LCM's motion for summary judgment.

Regarding petitioner's contention as to the failure of the RTC to conduct a hearing, as required under Sec. 3 of Rule 35 of the Rules of Court,[21] in *Carcon Development Corporation v. Court of Appeals*,[22] the Supreme Court explained that while the hearing stated under Section 3 may not be considered a superfluity, the same is nevertheless not a mandatory requirement and courts are given full discretion to determine the necessity thereof as the matters alleged in the motion for summary judgment may be resolved on the basis of the affidavits and depositions and admissions on file with the case, to wit:

“x x x The hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence on the issues set up in the pleadings. A hearing is not thus de riguer. The matter may be resolved, and usually is, on the basis of affidavits, depositions, admissions. This is not to say that a hearing may be regarded as a superfluity. It is not, and the Court has plenary discretion to determine the necessity therefor. Under the circumstance of this case, however, a hearing would have served no purpose, and was clearly unnecessary. The summary judgment was justified, considering the absence of opposing affidavits to contradict the sworn declaration of Univet's officials, which demonstrate that the issues raised in the answer are sham, not genuine.”

Similarly in this case, in light of the admission of petitioner that its certificate of title over the subject property was derived from OCT No. 994 issued on April 19, 1917, which was expressly declared by the Supreme Court to be null and void in the *Manotok Case*, We agree with the RTC's decision to forego the conduct of a summary hearing as there are clearly no longer any issues which needs to be threshed-out.

Lastly, with respect to petitioner's contention that the summary judgment was likewise improper for LCM's failure to attach in its motion the required affidavit of witnesses, depositions and admissions stated under Section 1 of Rule 35,[23] We likewise find the same to be unmeritorious. The said section expressly states that it is not merely supporting affidavits and depositions which may be used to support a motion for summary judgment. The admissions made by the parties in their respective pleadings also determines the propriety of the rendition of a summary judgment and it is the admission by petitioner in this case that its certificate of title was derived from OCT No. 994 issued on April 19, 1917, which was the RTC's basis in declaring petitioner's title as null and void in its summary judgment.

WHEREFORE, the foregoing considered, the instant petition is hereby ordered DISMISSED.

SO ORDERED.

Carandang, R. D., Chairperson and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 3-29

[2] Rollo, pp. 30-45.

[3] Rollo, pp. 46-48.

[4] Rollo, pp. 62-78.

[5] Rollo, pp. 81-113.

[6] Rollo, pp. 50-61.

[7] Rollo, pp. 44-45.

[8] Rollo, pp. 46-48. 9Rollo, p. 11.

[10] G.R. No. L-44001, June 10, 1988.

[11] SECTION 1. 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.

[12] Ongsitco v. Court of Appeals, G.R. No. 153537, May 5, 2006.

[13] Salvacion v. Palawan Council For Sustainable Development, G.R. No.178347, February 25, 2013.

[14] V. Ponce Company v. Municipality of Parañaque, G.R. No. 178431, November 12, 2012 .

[15] Balayan v. Acordia, G.R. No. 153537, May 5, 2006.

[16] G.R. No. 49983, April 20, 1992.

[17] Agcanas v. Nagum, L-20707, March 30, 1970.

[18] Basbas v. Spouses Basarte, G.R. No. 172660, August 24, 2011.

[19] G.R. Nos. 123346 and 134385, March 31, 2009.

[20] G.R. No. 207264, June 25, 2013.

[21] Section 3. Motion and proceedings thereon. — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

[22] G.R. No. 88218 December 19, 1989.

[23] Section 1. Summary judgment for claimant. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof. (1a, R34)

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