

**BENEDICT C. IMMACULATA & LIVIANNE GAY C. IMMACULATA,
PETITIONERS, VS. HON. HILARIO L. LAQUI, PRES. JUDGE, RTC, BR.
218, QUEZON CITY AND LUIS GERARDO SUNICO, RESPONDENTS.**

Ponente: DIMARANAN-VIDAL, J.

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DIMARANAN-VIDAL, J.:

Before Us is the Petition for Certiorari[1] under Rule 65 of the Revised Rules of Court filed by Petitioners BENEDICT IMMACULATA and LUVIANNE IMMACULATA (hereinafter Petitioners) which seeks to annul the Resolution[2] dated 28 MARCH 2005 of the Regional Trial Court of Quezon City, Branch 218, denying the Supplemental Motion for Production and Inspection of Documents[3] and the subsequent Order[4] dated 20 June 2005 denying the Motion for Reconsideration[5] filed by Petitioners.

THE FACTS

The instant controversy stemmed from a Complaint[6] filed by private Respondent LUIS GERARDO SUNICO (hereinafter private Respondent) on 16 October 2003 for reconveyance against Petitioners involving a piece of property located at 35 Seattle Street, Cubao, Quezon City covered by Transfer Certificate of Title No. RT-110904 (369474) in the name of Petitioners alleging that the latter are mere trustees of the abovementioned property. On 15 December 2003, Petitioner BENEDICT IMMACULATA filed his answer with compulsory counterclaim. On 24 June 2004, the Court a quo issued an Order to amend the complaint pointing out the need to implead both spouses, Petitioners herein whose names appear on the title. An amended complaint and an Answer thereto was filed and served by the parties on 7 July 2004 and 2 August 2004 respectively.[7]

On 10 November 2004, the Petitioners filed a Motion for Production and Inspection of Documents[8], praying that the private Respondent be ordered to produce and the Petitioners permitted to inspect and photocopy the individual income tax returns of Private Respondent for the years 1997 up to 2001, statement of accounts and various deposit documents of certificates of time deposit nos. 2057, 2066, and 2090, as well as statement of account and deposit documents for Account No. 003-11-000360-3 which motion was opposed[9] by the Respondent on 28 December 2004. On 29 January 2005, a Reply[10] was filed by the Petitioners to the Opposition. On 4 February 2005, the Petitioners filed a Supplemental Motion for the Production and Inspection of Documents[11]. On 17 February 2005, the Respondent filed his Opposition[12] to the Supplemental Motion.[13]

On 28 March 2005 the Court a quo issued the assailed Resolution denying the Supplemental Motion of the Petitioners in this wise:

WHEREFORE, the motion is DENIED.

On 16 April 2005, the Petitioners filed a Motion for Reconsideration[14] to which the Respondent filed an Opposition[15] on 29 April 2005. On 20 June 2005, the Court a quo issued an Order denying Petitioners' motion for reconsideration.[16]

Hence the instant petition.

THE ISSUES

Petitioners anchored their petition on the principal ground:

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED 28 MARCH 2005 DENYING THE MOTION OF THE PETITIONERS FOR PRODUCTION AND INSPECTION OF DOCUMENTS

with the following sub-issues, to wit:

First

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN HE MERELY ADOPTED THE OPPOSITION (TO THE MOTION FOR PRODUCTION AND INSPECTION DOCUMENTS OF THE PRIVATE RESPONDENT POINTING OUT IN HIS ORDER DATED 28 MARCH 2005 THAT THE DOCUMENTS SOUGHT TO BE PRODUCED ARE THOSE COVERED BY THE LAW ON BANK SECRECY AND THAT ASIA UNITED BANK IS BEING IMPEADED IN THE CASE.

Second

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN HE HELD THAT THE PRE-MARKING OF EXHIBITS BARS THE PETITIONERS FROM AVAILING OF THE MODES OF DISCOVERY ANENT THEIR MOTION FOR PRODUCTION AND INSPECTION OF DOCUMENTS.

Third

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN HE FAILED TO MAKE A RULING AS TO THE MOTION OF THE PETITIONERS FOR THE PRODUCTION AND INSPECTION OF THE PRIVATE RESPONDENT'S INCOME TAX RETURN.[17]

OUR RULING

The petition has no merit.

Section 1, Rule 27 of the Revised Rules of Court provides:

Section 1. Motion for production or inspection – Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection of and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; xxx

Clearly, from the foregoing provision, the person against whom an order for the production and/or inspection may be issued must be a party to the case. The Supplemental Motion filed by Petitioners which is the subject matter of the questioned Resolution of 28 March 2005, particularly prayed that Asia United Bank be ordered to produce for inspection and copying the documents requested to be inspected[18].

With the aforementioned legal and factual backdrop, our resolution of the First sub-issue is premised on the queries: (1) in what capacity does Asia United Bank holds the documents required by Petitioners to be inspected? (2) does it hold the documents as agent of the Respondent subject to the control of the Respondent or merely as third person with no connection to the parties whatsoever?

We answer above questions in the negative.

Abovementioned pronouncement finds justification on the fact that the relationship between the bank and its depositor are those of creditor-debtor. As held by the Supreme Court in the case of BPI Family Bank vs. Buenaventura et al.[19], thus:

Needless to stress, the contract between a bank and its depositor is governed by the provisions of the Civil Code on simple loan. Thus, there is a debtor-creditor relationship between a bank and its depositor. The bank is the debtor and the depositor is the creditor.

Perforce, there is no principal-agent relationship between them. The bank which holds the documents of its clients is the owner thereof.

On the query on whether the documents requested to be produced and examined are privileged under the provisions of Republic Act No. 1405 and does not fall under the exceptions mentioned in Section 2 thereof which states:

SECTION 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation. (Underscoring supplied)

it is clear that the requested documents are privileged and do not fall under the aforestated exceptions.

Unquestionably, the subject matter of the case, i.e. "Reconveyance" real property, before us is the property in question supra. Subject matter of an action is defined as the matter or thing from which the dispute has arisen, and ordinarily, it is the property or the contract or any other thing subject of the controversy[20].

In actions for Reconveyance, the subject matter is the land or property sought to be reconveyed, not the means of procuring or acquiring the same. In *Gitgano vs. Hon. Borromeo et al.*[21], the Supreme Court had the occasion to emphasize that the subject matter of an action for reconveyance was the piece of lot under litigation.

It is clear therefore, that the money deposited in the bank is not the subject matter in instant action for Reconveyance, which thus removes it from the cited exceptions in Section 2 supra. Consequently, no inspection can be made under the premises sans the depositor's consent.

The Court a quo was correct in denying Petitioners' Supplemental Motion. What the Petitioners should have done is to move for the resolution of their original motion which prayed that an order be issued requiring the plaintiff to produce and permit the defendants to inspect and photocopy each of the above-named documents under such terms and conditions that the Honorable Court may set.

Anent the Second sub-issue, wherein the Petitioner faults the Court a quo in ruling that the pre-marking of the exhibits of the parties barred the availment of the modes of discovery particularly the production and inspection of documents, this was in effect settled by the Supreme Court in *Security Bank vs. Court of Appeals et al.*[22], thus:

In *Republic v. Sandiganbayan*, the Court discussed exhaustively the significance of the various modes of discovery, an example of which is the aforesaid provision. In sum, the Court held that the said Rule aims to enable the parties to inform themselves, even before the trial, of all the facts relevant to the action, including those known only to the other litigants. Through this procedure, "civil trials should not be carried on in the dark." We quote:

" . . . Indeed, it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The experience in other jurisdictions has been that ample discovery before trial, under proper regulation, accomplishes one of the most necessary ends of modern procedure: it not only eliminates unessential issues from trials thereby shortening them considerably, but also requires parties to play the game with the cards on the table so that the possibility of fair settlement before trial is measurably increased. . . ."

Otherwise stated the aforecited case ruled that the availment of the aforementioned mode of discovery may be done at any time before the trial of the case and for the purpose of adequately preparing for it.

Be that as it may, the Court a quo, as discussed earlier, was nevertheless correct in denying the Supplemental Motion.

As to the Third sub-issue, as previously stated, what the court a quo ruled on only is the Supplemental Motion and not the principal motion[23] filed by Petitioners where the income tax return, bank documents, inter alia, of the Respondent are requested for production and examination. Evidently, the Petitioners failed to appreciate the remedy of a Petition for Certiorari under Rule 65. In *Gelindon et al., vs. Hon. Dela Rama et al.*[24], the Supreme Court emphatically held:

The indispensable elements of a petition for certiorari are: (a) that it is directed against a tribunal, board or officer exercising judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. Quite often, this Court has warned that for the extraordinary writ to issue, it must be clearly established that there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It, therefore, follows that before a petition for certiorari can be instituted, all remedies available in the trial court must have first been exhausted.

In the case of *Colarina vs. Court of Appeals et al.*[25], the Supreme Court echoed the abovementioned doctrinal principle, thus:

For, before certiorari could lie, all the remedies available in the trial court should have first been exhausted

Under the foregoing circumstance, Petitioners should have moved for the resolution of the main motion instead of prematurely filing the instant petition.

Everything considered, the Court a quo did not commit grave abuse of discretion in rendering the assailed Resolution.

WHEREFORE, premises considered, the Petition is hereby DENIED. The challenged Resolution of the Regional Trial Court is AFFIRMED.

SO ORDERED.

De Los Santos, (Chairman) and Lampas Peralta, JJ., concur.

[1] Rollo, pp. 2-26

[2] Id, p. 27

- [3] Id, p. 112
- [4] Id. p. 28
- [5] Id. pp. 122-128
- [6] Rollo, p. 29
- [7] Id, p. 6-7
- [8] Id. p. 93-96
- [9] Id. p. 97-100
- [10] Id. p. 101-111
- [11] Id. p. 112-115
- [12] Id. p. 116-121
- [13] Id, pp 7-9
- [14] Supra
- [15] Rollo, p. 129-134
- [16] Id.
- [17] Id, p. 10.
- [18] Supra
- [19] G.R. No. 148196. September 30, 2005.
- [20] Filipinas Investment and Finance Corp., vs. IAC, G.R. Nos. 66059-60, December 4, 1989.
- [21] G.R. No. L-40429. November 29, 1984
- [22] G.R. No. 135874. January 25, 2000.
- [23] supra
- [24] G.R. No. 105072. December 9, 1993
- [25] G.R. No. 117439. February 25, 1999.

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