

AGUEDO INGCO, PETITIONER, VS. RIZALINA T. CAPCO-UMALI, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 212 OF THE REGIONAL TRIAL COURT OF MANDALUYONG CITY, MARIE GERALDINE G. MACAP...

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

This is a Petition for Certiorari[1] (with Prayer for a Preliminary Mandatory Injunction) under Rule 65 of the Rules of Court,[2] assailing on the ground of grave abuse of discretion the Decision[3] dated 22 August 2012 penned by the Hon. Rizalina T. Capco Umali,[4] Presiding Judge of Branch 212, Regional Trial Court of Mandaluyong City[5] in the exercise of its appellate jurisdiction, in Civil Case MC12-927-A, for ejectment/forcible entry,[6] entitled "Aguedo Ingco versus Marie Geraldine G. Macapagal and Antonio Anatolio." The assailed Decision denied petitioner's appeal of the Decision[7] dated 24 February 2011, issued by Branch 60 of the Metropolitan Trial Court of Mandaluyong City,[8] which dismissed the case for lack of merit.

The antecedent facts, as culled from the records, are as follows:

On 13 September 2005, the Board of Directors[9] of Wack-Wack Twin Towers Condominium Corporation[10] passed a Resolution declaring ownership of certain condominium units at WWTTCC, whose owners/possessors have been delinquent in the payment of their monthly dues.[11] Unit 505-A[12] of WWTTCC, then registered in the name of Oscar/Haydee Badillo,[13] was one of the units offered for sale by the WWTTCC Board and purchased by petitioner Aguedo Ingco[14] through bidding. Petitioner was accordingly issued a certificate of sale and thereafter took possession thereof.

According to petitioner, on 28 October 2009, he received a writ of possession[15] over the subject property, addressed to Haydee M. Badillo "and all persons claiming rights under her," issued by Branch 57, Metropolitan Trial Court San Juan,[16] in connection with Civil Case No. 8967[17] entitled, "Marie Geraldine G. Macapagal,[18] doing business under the name and style Westport Lending Investor vs. Haydee M. Badillo." And despite petitioner's earlier written communication to the deputy sheriff of MTC-San Juan, private respondent Arturo Anatolio[19] that the owner/possessor of the condominium unit[20] was no longer Haydee M. Badillo, petitioner claimed that the writ was "issued and implemented upon force, intimidation, threat, strategy and stealth,"[21] with him being bodily removed from the unit, together with his son and their belongings, prompting him to file with the MTC the subject ejectment case.[22]

Answering,[23] respondent Macapagal denied the allegations in the complaint for ejectment and by way of affirmative defense averred that it failed to state a cause of action for failure to make a specific averment that petitioner was removed of his possession over the subject property and further, that respondent Macapagal was continuously depriving petitioner of possession thereof. Also, according to said respondent, if there was indeed deprivation of possession, it was through a lawful order of the court, i.e., a writ of possession issued and implemented by the court sheriff.

Thereafter, the MTC rendered a decision, the dispositive portion of which reads, thus:

"X x x

Premises considered, defendant has a better right of physical possession over the subject property located at 505-A Wack-Wack Twin Towers Condominium, Wack-Wack Road, Mandaluyong City.

Accordingly then, this case is hereby ordered dismissed for lack of merit. All other claims and counter-claims are likewise ordered dismissed.

SO ORDERED.

X x x"[24]

Unsatisfied, petitioner appealed the foregoing decision which was affirmed by the court a quo in its Decision dated 22 August 2012, the dispositive portion of which reads, thus:

"X x x

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated February 24, 2011 of the Metropolitan Trial Court of Mandaluyong City, Branch 60 in Civil Case No. 8967 (sic) is hereby AFFIRMED in toto.

SO ORDERED.

X x x"[25]

Petitioner sought relief to this Court via the present Petition for Certiorari, raising the following grounds, thus:

A.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S APPEAL BASED ON THE ISSUE OF OWNERSHIP.

B.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S APPEAL BASED SOLELY ON A DETERMINATION THAT PRIVATE RESPONDENT MACAPAGAL HAS A BETTER RIGHT OF POSSESSION OVER THE SUBJECT PROPERTY WITHOUT CONSIDERING THE OTHER PERTINENT ISSUES IN A FORCIBLE ENTRY CASE.[26]

Before delving on the merits of the case, this Court finds the present recourse, the filing of a Petition for Certiorari under Rule 65 of the Rules of Court, improper. Under Section 1, Rule 42 of the Rules of Court, appeal to the Court of Appeals in cases decided by the Regional Trial Court[27] in the exercise of its appellate jurisdiction is by way of a petition for review. As a matter of fact, Supreme Court Circular No. 2-90 is clear on this, specifying the proper modes of appeal to the Court of Appeals from the RTCs, thus:

"X x x

3. Appeals to the Court of Appeals. - On the other hand, appeals by certiorari will not lie with the Court of Appeals. Appeals to that Court from Regional Trial Courts may be taken:

a) by writ of error (ordinary appeal) - where the appealed judgment was rendered in a civil or criminal action by the regional trial court in the exercise of its original jurisdiction; or

b) by petition for review - where the judgment was rendered by the regional trial court in the exercise of its

appellate jurisdiction.

The mode of appeal in either instance is entirely distinct from an appeal by certiorari to the Supreme Court.

4. Erroneous Appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed. [Emphasis supplied]

X x x"

It must be noted that remedies of appeal (including petition for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.[28] On this score alone, the instant Petition should be dismissed.

Technicality aside, the Petition must still fail.

Petitioner argues that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's appeal and for failing to consider the pertinent issues in a forcible entry case, which are: a) did the plaintiff have prior physical possession of the property; b) was plaintiff dispossessed of subject property by the defendant; and c) was the act of dispossession committed with force, strategy, intimidation or stealth.[29]

For a forcible entry suit to prosper, the plaintiff must allege and prove the following: (a) prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and (c) that the action must be filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.[30]

Even granting arguendo that petitioner was in prior possession of the unit allegedly in the concept of an owner, it is undisputed that the dispossession was not that of private respondent Macapagal but by a lawful order of the court, i.e., through a writ of possession implemented by the respondent sheriff. Clearly, petitioner was never dispossessed by force, intimidation, strategy or stealth for a case of forcible entry to prosper.[31]

In the case of David vs. Cordova,[32] it was held that the foundation of a possessory action is really the forcible exclusion of the original possessor by a person who has entered without right. The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession therefrom. It must be emphasized that unless proven otherwise, the presumption of regularity attaches to the official act of respondent sheriff in the implementation of the writ of possession.[33]

Petitioner however argued that the respondent sheriff must enforce the writ according to its tenor, that is, to issue it against Haydee Badillo "and all persons claiming right under her," stressing that he did not derive his title from Badillo but from a public auction conducted by the condominium corporation; claiming further, that he is a complete stranger to the MTC-San Juan proceedings from which the writ emanated, thus, may not be summarily ejected from the unit without due process of law.[34]

It is undisputed that petitioner took possession of the unit in the concept of an owner since 2005 relying on the Certificate of Sale issued to him by the vendor WWTTCC as a basis thereof.[35] However, among the annotations on the Condominium Certificate of Title[36] 13901 in the name of Badillo are Entry 80428/C-No. 13901 dated 27 September 2001 on the notice of levy upon attachment[37] and on the Certificate of Sale in favor of Westport

Entry No. 4657/C-No. 13901,[38] both relative to the San Juan case. Thus, as early as 2001, there was already a notice that the subject unit is under litigation, but this notwithstanding, petitioner acquired and took possession of the same under said limitation.

Under the facts obtaining, the filing of a summary action for ejectment is obviously not the appropriate judicial recourse. As laid down in *China Banking Corporation vs. Spouses Oscar and Lolita Ordinario*,[39] petitioner has the following judicial options—

"X x x

The above provision is not without exception. Under Section 33, Rule 39 of the 1997 Rules of Civil Procedure, as amended, the possession of the foreclosed property may be awarded to the purchaser or highest bidder 'unless a third party is actually holding the property adversely to the judgment debtor.' Assuming arguendo that respondent spouses are adverse third parties, as they so averred, Section 16 of the same Rule reserves to them the remedies of (1) *terceria* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor and (2) an independent 'separate action' to vindicate their claim of ownership and/or possession over the foreclosed property. X x x

X x x"

Petitioner is not left without a remedy.

All told, grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[40] Here, petitioner failed to show that public respondent committed such wanton, whimsical, unfettered and capricious exercise of judgment. On the contrary, the public respondent clearly ruled on the issues raised before her consistent with the law and jurisprudence.

WHEREFORE, premises considered, the Petition for Certiorari is DISMISSED and the Decision dated 22 August 2012 stands.

SO ORDERED.

Bato, Jr., (Chairperson), and Sempio Diy, JJ., concur.

[1] Rollo, pages 03 to 28; "Petition," for brevity.

[2] "Rules," for brevity.

[3] Rollo, pages 29 to 33, Annex "A," Petition.

[4] "Public respondent," for brevity.

[5] "Court a quo," for brevity.

[6] "Ejectment case," for brevity.

[7] Rollo, pages 86 to 93, penned by Assisting MTC Judge Bonifacio S. Pascua.

[8] "MTC," for brevity.

[9] "Board," for brevity.

- [10] "WWTTC," for brevity.
- [11] Rollo, page 54; Complaint, page 04.
- [12] "Subject property," for brevity.
- [13] "Badillo," for brevity."
- [14] "Petitioner," for brevity.
- [15] "Writ," for brevity.
- [16] "MTC-San Juan," for brevity.
- [17] "San Juan case," for brevity.
- [18] "Respondent Macapagal," for brevity.
- [19] "Respondent sheriff," for brevity.
- [20] "Unit," for brevity.
- [21] Rollo, page 09, par. 09 of Petition.
- [22] Id. at 08 to 09, pars. 07 to 08 of Petition.
- [23] Id. at 61 to 85.
- [24] Id. at 93.
- [25] Id. at 33.
- [26] Id. at 12 to 13.
- [27] "RTC," for brevity.
- [28] Spouses Ruben and Myrna Leynes vs. Court of Appeals, G.R. No. 154462, 19 January 2011.
- [29] Rollo, page 15, par. 24, Petition.
- [30] Hubert Nuñez vs. Slteas Phoenix Solutions, Inc., G.R. No. 180542, 12 April 2010.
- [31] Sec. 3, par. (m), Rule 131 of the Rules of Court.
- [32] G.R. No. 152992, 28 July 2005.
- [33] Century Saving Bank vs. Spouses Danilo T. Samonte and Rosalinda M. Samonte, G.R. No. 176212, 20 October 2010.
- [34] Rollo, pages 16 to 17.
- [35] Id. at 143 to 144.
- [36] "CCT," for brevity.
- [37] Rollo, page 134, see page 02 of CCT.
- [38] Id.
- [39] G.R. No. 121943, 24 March 2003.

[40] Alfredo Tagle vs. Equitable PCI Bank, et al, G.R. No. 172299, April 22, 2008.

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