

VIRGINIA MUGAS, PETITIONER, VS. THE HONORABLE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT-BRANCH 34, PANABO CITY, DAVAO DEL NORTE AND RICARDO S. MORAL, RESPONDENTS.

Ponente: INTING, J.

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INTING, J.:

Before Us is petitioner's Petition for Certiorari under Rule 65 of the Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction assailing the Order[1] dated January 29, 2010 of the Regional Trial Court (hereinafter court a quo), Branch 34, Panabo City, Davao del Norte in Special Civil Case No. 10-2003 and the Order[2] dated July 22, 2010 denying herein petitioner's motion for reconsideration.

The facts of the case are as follows:

On January 23, 2003, Virginia Mugas borrowed the sum of P258,000.00 from Ricardo S. Moral. To secure the payment of her debt, Mugas mortgaged the one-hectare portion of her parcel of land covered by Homestead Patent No. (XI-2) 1281 and registered under Original Certificate of Title (OCT) No. P-16919[3]. The loan and mortgage were contained in a document denominated as Kasabutan[4] dated January 23, 2003. Under the agreement, Mugas bound herself to give fifteen (15) sacks of palay to Moral every harvest time as lease in the concept of interest. However, Mugas allegedly failed to comply with the agreement.

On May 6, 2003, Moral sent Mugas a letter demanding from her to deliver the 15 sacks of palay. Mugas allegedly received the demand letter[5] but refused to acknowledge receipt thereof.

Consequently, Moral filed a Complaint[6] on June 10, 2003 before the RTC for foreclosure of mortgage, damages and attorney's fees. The court a quo accordingly issued summons for Mugas to submit her answer. The summons was received personally by Mugas on July 29, 2003. The defendant's counsel, Atty. Camilo F. Naraval submitted an Ex-Parte Motion for Extension of Time to File an Answer on August 12, 2003, which was granted by the court a quo in its Order dated August 13, 2003 and received by Atty. Naraval on August 20, 2003. However, no answer was filed thereafter by Atty. Naraval representing the defendant.

Plaintiff Moral, through counsel, filed a Motion to Declare Defendant in Default on September 10, 2003. The motion, after hearing, was granted by the court a quo. On October 30, 2003, a Decision was rendered by the court a quo, the dispositive portion of which provides:

WHEREFORE, in view of all the foregoing, judgment by default is hereby rendered in favor of plaintiff Ricardo S. Moral and against Virginia Mugas, ordering the latter to pay to the former the sum of TWO HUNDRED FIFTY EIGHT THOUSAND (P258,000.00) PESOS plus interests thereon at the rate of fifteen (15) sacks of palay every harvest with each sack of palay weighing fifty (50) kilos, beginning with the May 6, 2003 harvest as well as to pay the costs to this Court within ninety (90) days from the date of service of the judgment and, in the event of default of such payment, the mortgaged real property covered by Original Certificate of Title No. P-16919 registered in the name of defendant Virginia Mugas shall be sold to realize the

mortgaged debt, interests and costs.

SO ORDERED.

With the finality of the decision, Moral submitted a Motion for Execution[7] on November 3, 2004 which was granted by the court a quo in its Order[8] dated November 11, 2004. The corresponding Writ of Execution[9] was issued and the Sheriff, after having implemented the writ, submitted a return on the writ with a report that the writ of execution had already been fully satisfied. The subject real property mentioned in the decision was foreclosed and sold at public auction to Moral in the amount of the indebtedness of P258,000.00 which was a full satisfaction of the mortgage debt. The sale was also confirmed[10] by the court a quo.

Thereafter, Moral filed a Motion for the Issuance of a Writ of Possession[11] over the property covered by OCT No. P-16919. The motion was granted by the court a quo.

The court a quo noted that the subpoenas or notices to Atty. Naraval, starting with the subpoena for the hearing of the motion for the issuance of writ of possession dated February 15, 2008 had been returned with the notation "DECEASED". Also, the subpoena or notice sent to Mugas herself for the hearing of the same motion was likewise returned with the notation "UNKNOWN".

Hence, on June 5, 2008, the Writ of Possession[12] was issued and the Sheriff made a return with a report that the writ was fully satisfied. Moral then submitted a Motion for the Issuance of a Writ of Demolition[13] on December 8, 2008. It was during the hearing of the motion that Mugas appeared together with a new counsel, Atty. Harold Sator, who manifested the intention of his client to redeem the property as stated in the Order of the court a quo dated February 13, 2009.

Subsequently, a certain Rufino M. Pagaduan submitted a Motion for Intervention through counsel Atty. Harold Sator. Pagaduan alleged that he has an interest in the case at bar being an agricultural lessee of Mugas, who is the registered owner of the subject property. He claimed that he had erected a residential house on the subject property in the year 1990 occupied by him, his wife and children.

Mugas, through counsel, then submitted the Omnibus Motion (Motion to Set Aside Writs of Execution and Possession and Opposition to Motion for Issuance of Writ of Demolition) on June 16, 2009. She alleged that she was not afforded her day in court because of the gross negligence of her counsel Atty. Naraval, which amounted to extrinsic and collateral fraud that deprived her of the right to be heard or due process of law. The motion also stated that the judgement rendered by the court a quo is void by reason of lack of due process and collateral extrinsic fraud. The judgment being void, it can never attain finality and any writ of execution based on it is void.

Atty. Sator also filed a Motion for Withdrawal of Appearance for the defendant-intervenor Pagaduan which was granted by the court a quo. A new lawyer for defendant-intervenor, in the person of Atty. Angeliza Razo, entered an appearance which was duly noted by the court a quo.

In the hearing held on August 18, 2009 which was called purposely for the three motions, the court a quo noted the absence of Moral's counsel despite notice. Thus, the counsel was directed to submit a comment to the Motion for Intervention and Omnibus Motion submitted by Mugas and defendant-intervenor Pagaduan. No comment was however filed.

On January 29, 2010, the court a quo issued the assailed Order, the fallo of which reads:

WHEREFORE, considering the foregoing disquisition, this court hereby DENIES both the Omnibus Motion (Motion to Set Aside Writs of Execution and Possession and Opposition to Motion for Issuance of Writ of Demolition) submitted by the defendant and the Motion for Intervention submitted by defendant-intervenor

Pagaduan while action on the Motion to Issue a Writ of Demolition is hereby DEFERRED until such time that mediation shall have been conducted among the parties.

Set, therefore, the mediation conference of this case on March 12, 2010 at 2:00 o'clock in the afternoon. Notify the plaintiff and the defendant and their counsels of the scheduled mediation.

SO ORDERED.

The court a quo ratiocinated:

Xxx Upon initial evaluation, this Court is of the assessment that even if the defendant movant only prayed for the setting aside of the writs of execution and possession, she is really in essence also moving that the judgment rendered by the court on October 30, 2003 be declared void by reason of negligence or extrinsic/collateral fraud which action is really a petition for relief from judgment as defined under Rule 38 of the Rules of Court since this cannot proceed to set aside the writs of execution and possession without voiding the judgment previously rendered by this court.

Xxx

Such receipt by the defendant of a copy of the writ of execution should have already impelled her to do some acts to protect her rights over the alleged property. But, defendant did not do anything since said receipt of the writ of execution on January 12, 2005 and the first act that she did was when she, through her lawyer, filed a Manifestation praying before this court that the case be brought to mediation. It was not even a Petition for Relief from Judgment that was filed.

Xxx this court evaluates that the Omnibus Motion failed to comply with the requirements of a Petition for Relief from Judgment under Rule 38 of the Rules of Court. The movant had not filed her motion within the reglementary period of 60 days from the time she learned of the decision which was from the time she received a copy of the writ of execution on January 12, 2005. She only filed the instant Omnibus Motion last June 16, 2009 or more than for (sic) years after her knowledge of the adverse decision.

Xxx

Under Section 1, Rule 19, it is apparent that the court is given the discretion to determine whether or not the intervention will unduly delay the adjudication of the rights of the original parties or whether or not the intervenor's rights may be fully protected in as (sic) separate proceedings.

Instantly, this court believes that allowing the would-be intervenor to intervene in this case will clearly delay the adjudication of the right of the plaintiff in this case which had already won in the case. Moreover, it is the assessment of the court that the right of the would-be intervenor may still be fully protected in a separate proceedings or action which may file against the plaintiff herein.

xxx

Mugas and Pagaduan filed a motion for reconsideration but the court a quo denied it in its Order[14] dated July 22, 2010.

Hence, the instant petition.

Petitioner Mugas now comes before Us raising the following assignment of errors[15]:

I.

TO DENY PETITIONER'S ACTION TO ANNUL THE JUDGMENT BASED ON EXTRINSIC OR COLLATERAL FRAUD BECAUSE OF PRESCRIPTION WOULD RESULT TO GROSS MISCARRIAGE OF JUSTICE CONSIDERING PETITIONER POSSESSES STRONG, VALID AND MORAL GROUNDS

TO COUNTERACT PRIVATE RESPONDENT'S CLAIM.

II.

OTHER THAN EXTRINSIC OR COLLATERAL FRAUD, PETITIONER'S GROUND FOR HER ACTION TO ANNUL JUDGMENT ALSO CONSISTS OF LOWER COURT'S WANT OF JURISDICTION, WHICH PRESCRIBES IN TEN (10) YEARS.

III.

RES JUDICATA DOES NOT APPLY IN THE CASE AS THE ASSAILED JUDGMENT IS RENDERED BY A COURT HAVING NO JURISDICTION AND IS NOT A JUDGMENT ON THE MERITS.

On October 6, 2011, this Court issued a Resolution[16] denying herein petitioner's prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

Our Ruling

We find the petition devoid of merit.

Petitioner submits that her low educational background prevented her from knowing the intricacies of litigation and alleges that her former counsel evidently failed to apprise her of her role in the case. She contends that when she received the writ of execution on January 12, 2005, she has four years from said discovery of the unfavorable decision of the court or until January 13, 2009 to seek for the annulment of the judgment. Citing several circumstances to the effect that it was actually her son who executed the document Kasabutan, and that the latter was only harassed to enter into the agreement, petitioner asks that the rules of procedure be relaxed to allow her to exercise her right to annul the alleged void judgment dated October 30, 2003 of the court a quo.

Petitioner also argues that the court a quo did not acquire jurisdiction over the case. In real actions such as foreclosure of real estate mortgage, jurisdiction is determined based on the allegation of the assessed value of the subject property. In the absence of any statement in the complaint as regards the assessed or estimated value of the property, the correct docket fee cannot be computed. There was failure to comply with these rules by the court a quo. As such, petitioner asseverates that she still has the right to ask for the annulment of judgment.

Lastly, petitioner contends that res judicata does not apply in the case as the assailed judgment is rendered by a court having no jurisdiction over the subject matter and the judgment was not on the merits.

Prefatorily, we find no need to delve further and deeper into the facts and issues raised by petitioner because at the outset it is clear that the instant petition must be dismissed for failure of petitioner to demonstrate grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court a quo in rendering the assailed Orders.

To warrant the issuance of a writ of certiorari, the tribunal must be shown to have capriciously and whimsically exercised its judgment in a way equivalent to lack or excess of jurisdiction; or, in other words, that the power was exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility 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.[17] A bare allegation of grave abuse of discretion is not enough.[18] In this case however, surprisingly, petitioner did not even allege grave abuse of discretion on the part of the court a quo in issuing the Orders.

It bears stressing that petitioner instituted the instant petition to assail the Orders dated January 29, 2010 and July 22, 2010 of the court a quo which denied the Omnibus Motion (Motion to Set Aside Writs of Execution and Possession and Opposition to Motion for Issuance of Writ of Demolition) filed by her. A reading of petitioner's

arguments would show that the judgment that petitioner really wanted to obtain relief from was the Decision dated October 30, 2003 which decided against her favor following an order of default, not the Orders assailed in this petition.

What petitioner wants from this Court is to set aside the Decision dated October 30, 2003 for the reasons that she was allegedly denied of due process and that the court that rendered such decision had no jurisdiction over the case. Unfortunately though, such decision had long become final and executory as petitioner failed to appeal therefrom. Petitioner's presence was only felt on June 16, 2009 when she, through counsel, filed the Omnibus Motion subject of this petition. Imputing fault upon her former counsel, petitioner claims she was denied of her day in court. The records, however, militate against petitioner's claim.

The record shows that petitioner received the Summons with Complaint personally on July 29, 2003. Despite this, no Answer was filed by petitioner's counsel. Neither did petitioner show that she did all her best efforts to follow-up from her counsel the status of the case filed against her. Furthermore, petitioner herself admitted that she received the writ of execution on January 12, 2005. This could have impelled petitioner to do something. Ironically, it was only on June 16, 2009 or more than four (4) years later when she appeared with her new counsel and filed the Omnibus Motion. Petitioner clearly slept on her rights. She cannot now come to Us and ask for the reversal of the judgment which had long become final and executory, and worse, through this petition for certiorari which is indubitably the wrong venue for her arguments.

It is undisputed that the October 30, 2003 Decision of the court a quo in Special Civil Case No. 10-2003 is already final and executory. Once a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest.[19] All that remains is the execution of the decision which is a matter of right. The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty.[20]

Anent the writ of possession, it is settled that the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond if the redemption period has not yet lapsed.[21] If the redemption period has expired, then the filing of the bond is no longer necessary. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.[22] It is also unmistakable that the trial court, in which jurisdiction over applications for writs of possession is by law vested, had acquired jurisdiction over the subject matter of respondent's application merely upon its filing.[23] And since it had so acquired jurisdiction over the incidents of the application, it was then bound to act on it and issue the writ prayed for inasmuch as that duty is essentially ministerial.[24]

A special civil action under Rule 65 of the Rules of Court is only available in cases when a 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.[25] In the instant case, no grave abuse of discretion may be imputed to the court a quo and it certainly has the jurisdiction to issue the assailed orders. Furthermore, certiorari is not available where the proper remedy is appeal in due course and such remedy was lost because of respondent's failure to take an appeal. The special civil action of certiorari is not and cannot be made a substitute for appeal or a lost appeal.[26] To reiterate, the errors raised by petitioner in the instant petition, if indeed there were, are nevertheless mere errors of judgment which are correctible by an ordinary appeal or a petition for relief, a remedy that was then available to petitioner.

WHEREFORE, premises considered, the petition for certiorari is hereby dismissed.

SO ORDERED.

Camello (Chairperson) and Lopez, JJ., concur.

[1] Rollo, pp. 31-36, penned by Hon. Judge Marivic Trabajo Daray

[2] Rollo, pp. 37-38

[3] Rollo, p. 43

[4] Rollo, p. 42

[5] Rollo, p. 44

[6] Rollo, pp. 39-41

[7] Rollo, pp. 54-55

[8] Rollo, p. 57

[9] Rollo, p. 58

[10] Rollo, p. 64

[11] Rollo, pp. 65-66

[12] Rollo, p. 70

[[13]] Rollo, pp. 71-72

[14] Rollo, pp. 37-38

[15] Memorandum, Rollo, p. 217

[16] Rollo, pp. 204-209

[17] Mandy Commodities Co., Inc. v. The International Commercial bank of China, G.R. No. 166734, July 3, 2009

[18] Supra

[19] Anama v. Court of Appeals, G.R. No. 187021, January 25, 2012

[20] Supra

[21] Espinoza v. United Overseas Bank Phils., G.R. No. 175380, March 22, 2010

[22] Supra

[23] Supra Note No. 17

[24] Supra

[25] Philippine Tourism Authority v. Philippine Golf Development & Equipment, Inc., G.R. No. 176628, March 19, 2012

[26] Swire Agricultural Products v. Hyundai Corp., G.R. No. 163934, June 9, 2005

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