

**ELISA O. GAMBOA, EDMUND FRITZ WEBER, A MINOR ASSISTED BY
FAY G. WEBER, GUARDIAN, AND JUAN S. LOPEZ, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, COROLLA TRANSPORTATION CO.,
INC....**

G.R. No. L-38068. September 30, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for review on certiorari of the decision of the Court of Appeals[1] in CA-G.R. No. SP-01966 entitled "Corolla Transportation Co., Inc. and Bert Villalon, petitioners, versus Hon. Arsenio Alcantara, as Judge of the Court of First Instance of Rizal, Branch XV, Elisa Gamboa, Edmund Fritz Weber, a minor assisted by Fay C. Weber, Guardian, and Juan S. Lopez, respondents." The dispositive portion of the decision promulgated by respondent Court on November 13, 1973 which is sought to be reviewed reads thus:

"WHEREFORE, finding respondent Judge to have committed grave abuse of discretion in annulling the order of September 18, 1972, and in the interest of broader justice and public policy, the writs of certiorari and prohibition herein prayed for are hereby granted and the writ of preliminary injunction heretofore issued made permanent. No pronouncement as to costs.

SO ORDERED."[2]

The factual background of the case (CA-G.R. No. SP-01966 entitled "Corolla Transportation Co., Inc. and Bert Villalon, petitioner, versus Hon. Arsenio Alcantara, Elisa Gamboa, et al.) as embodied in the respondent court's decision is as follows:

"Petitioners are the defendants in Civil Case No. 629-M (14622) filed by herein private respondents with the CFI of Rizal, for damages. Judgment was rendered by the trial court (then presided over by Judge Vivencio Ruiz) in favor of the private respondents. The judgment having become final, a writ of execution was issued and accordingly, a public auction sale was conducted by the Sheriff who issued a Sheriff's Certificate of Sale (dated March 14, 1972) of a Toyota Corolla taxi, model '69, and of a Certificate of Public Convenience to operate 60 units of taxicabs, in favor of private respondents, represented by Atty. Jesus Suntay, their counsel of record (Annex A - Answer; Appendix B - Memorandum for Petitioners). On March 19, 1972, herein petitioners filed an "Urgent Motion to Set Aside Sale on Execution" on the grounds that the execution sale was attended by fraud, mistake and/or irregularity "so serious as to have worked a grave injustice to defendants herein." The then presiding Judge Ruiz denied said motion in his Order dated April 11, 1972. On April 22, 1972, herein petitioners filed a Motion for Reconsideration which private respondents opposed. In an Order, dated September 18, 1972, Judge Ruiz granted petitioner's motion for reconsideration, setting aside the execution sale on the grounds that it is defective and irregular in that: (a) the execution sale of the Toyota Corolla taxicab was not sold in full view of the general public; (b) Atty. Suntay, counsel for private respondents, as highest bidder, did not have written authorization from his clients to participate in the public bidding; (c) Atty. Suntay did not deposit any cash to the Sheriff after the sale; and (d) the price of the taxicab at P1,000.00 (which could be sold at 10 or 15 times more) and the Certificate of Public Convenience for 60 units

at P14,000.00 (which could be sold at P6,000.00 per unit or a total of P360,000.00) is grossly inadequate and shocking to the conscience (Annex A-Petition).

On October 4, 1972, Judge Vivencio Ruiz tendered his resignation pursuant to and in compliance with Letter of Instruction No. 11 issued by the President of the Philippines (Annex A-Memorandum for Petitioners). On October 18, 1972, the aforesaid order of Judge Ruiz, dated September 18, 1972, setting aside the execution sale, was promulgated and filed with the Clerk of Court. On October 21, 1972, Judge Ruiz received the letter of acceptance by the President. Respondent Judge Arsenio Alcantara was appointed in his stead.

On November 21, 1972, private respondents filed their "Motion to Annul and/or Set Aside Order, dated September 18, 1972" (Annex B-Petition) which petitioners opposed (Annex C - id.). On January 26, 1973, respondent Judge Alcantara issued the order (Annex E - id.) assailed in this petition granting private respondents' motion, and declaring as null and void the order of the former Judge Ruiz, thereby restoring the validity and efficacy of the execution sale in favor of private respondents. The reasons stated in the questioned order were: (1) that Judge Ruiz ceased to be a member of the Judiciary on the date of his resignation that was October 4, 1972, or, on the date of acceptance thereof by the President in his letter of October 6, 1972; (2) that the order of September 18, 1972 was filed with the Clerk of Court only on October 18, 1972 - to be valid and binding, a judgment or order must be duly signed and promulgated during the incumbency of the Judge whose signature appears thereon (citing *People vs. Soria*, L-25175, March 1, 1968, 22 SCRA 948; *Comia vs. Nicolas*, G.R. No. L-26079, September 30, 1969; and *People vs. So*, L-8732, July 30, 1967); (3) that Judge Ruiz cannot even be considered a de facto officer after October 4 or 6, 1972 because - (a) the filing of the resignation of a public officer in the proper office, without any objection constitutes a sufficient acceptance (*Gatus vs. Delaware County*, 12 Iowa, 405 cited in *Martin*, Administrative Law, p. 173, 1970 ed.) and notice of acceptance is not necessary; (b) good faith on the part of Judge Ruiz did not exist when the order of September 18, 1972 was filed and promulgated with the Clerk of Court on October 18, 1972, "on account of the fact that all orders except litigated order of September 18, 1972 filed with the Clerk of Court on October 18, 1972 bore October dates as attested by the certification of the Clerk of Court, Annexes "A" and "A-1", and if it were true that the contested order was made on September 18, 1972, why was it not released earlier than October 18, 1972 when several orders or decisions bearing all October dates were released ahead of the order in question" (p. 4, Annex E - Petition).

Eleven days after receipt of the copy of the order of January 26, 1973, petitioners filed their Motion for Reconsideration (Annex F - id.). Private respondents interposed their opposition (Annex G - id.). On March 7, 1973, respondent Judge denied petitioner's motion (Annex H - id.). Nineteen days after receipt of notice of denial of their motion for reconsideration, petitioners filed a "Motion for Reconsideration and Motion to Adduce Evidence in Support of Motion" (Annex I - id.). After hearing, respondent Judge denied said motion for lack of sufficient merits (Annex X - id.)."[3]

Aggrieved by the adverse ruling of Judge Alcantara over their motion, herein private respondents on April 26, 1973 filed before the Court of Appeals a petition for "Certiorari and Prohibition with a Prayer for a Writ of Preliminary Prohibitory Injunction" docketed as CA G.R. No. SP-01966. On November 13, 1973, respondent Court of Appeals rendered judgment granting herein private respondents' prayer for writs of certiorari and prohibition and making permanent the preliminary injunction which had already been issued. Herein petitioners not satisfied with the aforesaid decision filed on December 19, 1973 and January 4, 1974, respectively, their motion for reconsideration and a supplemental motion. However, respondent Court denied herein petitioners' motions on January 2 and April 16, 1974, respectively. Hence, this petition on Certiorari seeking the reversal of the decision dated November 13, 1973 of respondent Court of Appeals.

The basic issue to be resolved in this case is whether Judge Vivencio M. Ruiz ceased to be judge de jure or de facto upon acceptance of his resignation by the President of the Philippines. Upon this issue hinges the validity or invalidity of the order of Judge Ruiz dated September 18 and promulgated on October 18, 1972. The resolution of

this issue is essential because the assailed order of Presiding Judge Arsenio B. Alcantara declaring as null and void Judge Ruiz' order was pre-cisely predicated and premised on the assumption that Judge Ruiz ceased to be judge de jure or de facto on October 6, 1972, the date the President of the Philip-pines accepted his resignation. The assailed order of respondent Judge reads:

" O R D E R

Submitted is plaintiffs' motion to annul and/or to set aside Court's order dated September 18, 1972 which was vehe-mently opposed by defendants, thru counsel.

Records disclose that the Honorable Presiding Judge, Vivencio Ruiz, issued an order on September 18, 1972. Same order was filed with the Clerk of Court on October 18, 1972 as shown by the certi-fication of the Clerk of Court, Annex "A", and the Court's Record Book for orders and decisions, Annex "A-1". In a letter of October 4, 1972, Honorable Judge Ruiz tendered his resignation which was duly accepted by His Excellency, the President of the Philippines, in a communication dated October 6, 1972, stating among others that "your resignation is hereby accepted effective today", Annex "B".

First problem placed on the shoulder of the Court is, when was the termination of office of Honorable Judge Ruiz who is-sued the disputed order? From the President's letter dated October 6, 1972, Annex "B", it appears that Honorable Judge Ruiz' letter of resignation was dated October 4, 1972. Apparently, Judge Ruiz must have filed his resignation thru the Department of Justice or directly with the Office of the President on October 4th or 5th, 1972 because the President's letter of acceptance bears the date October 6, 1972. In the Philippines, acceptance of resignation to public officers is necessary. (Martin, Administrative Law, Law of Public Officers and Election Law, p. 172, 1970 ed.) Acceptance of resignation, where this is required, may be manifested either by a formal declaration or by the appointment of a successor. (Edwards vs. U.S., 103 U.S., 471). So, where the written resignation of the officer, intended to operate as such, was duly filed in the proper office without objection, and was indorsed as his resignation, it was held that this was sufficient acceptance if any was required. (Gatus vs. Delaware County, 12 Iowa, 405, cited in Martin, Administrative Law, Law of Public Officers and Election Law, p. 173, 1970 ed.) Adopting the foregoing doctrine as a criterion, the submission by the Honorable Judge Ruiz of his letter of resignation on October 4th or 5th, 1972 to the proper office there being no evidence of any opposition thereto, amounted to acceptance. Consequently, he ceased to be a member of the judiciary on either of the two (2) aforementioned dates. Hence, the President's acceptance of the resignation in his letter dated October 6, 1972 was a mere formality.

Next issue to consider is the effect of the expiration of the term of a public officer on his subsequent acts. As discussed elsewhere, the order of September 18, 1972 was filed with the Clerk of Court on October 18, 1972 after the tenure of Honorable Judge Ruiz was terminated on October 4th or 5th, 1972. Indeed, it is not the date of the writing of the order that constitutes rendition thereof and gives its validity, but the filing of such order with the Clerk of Court. (Peo. vs. Soria, L-25175, March 1, 1968, 22 SCRA 948; see also Comia vs. Nicolas, G.R. L-26079, September 30, 1969.) Again, it is a well settled rule that: "to be binding, a judgment must be duly signed and promulgated during the incumbency of the Judge whose signature appears thereof." (Peo. vs. So, L-8732, July 30, 1967)

Of course, defendants argued that Judge Ruiz was notified only of the acceptance of his resignation on October 21, 1972 and before that date, he may be considered a de facto judge wherein his acts prior to said date were valid and legal. This claim of defendant appears untenable in the light of the ruling laid down in Gatus vs. Delaware, County, SUPRA, wherein the filing of the resignation of a public officer in the proper office, without any objection constitutes a sufficient acceptance. Furthermore, a judge who in good faith continues to act and is recog-nized by common error after abolition of his Court by statute is deemed Judge de facto of the new Court of the jurisdiction presided by him. (U.S. vs. Abalos, 1 Phil. 73). Evidently, good faith is a requirement for a de facto officer. However, this element does not seem to exist in the instant case on account of the fact that all orders except the litigated order of September 18, 1972 filed with the Clerk of Court on

October 18, 1972 bore October dates as attested by the certification of the Clerk of Court, Annexes "A" and "A-1" and if it were true that the contested order was made on September 18, 1972, why was it not released earlier than October 18, 1972 when several orders or decisions all bearing October dates were released ahead of the order in question?

WHEREFORE, the Court hereby declares the order dated September 18, 1972 null and void and affirms the Court's order on April 11, 1972 sustaining the execution sales.

SO ORDERED."[4]

Petitioners maintain that Judge Vivencio M. Ruiz ceased to be judge after October 6, 1972 when the President of the Philippines accepted his resignation dated October 4, 1972. Thus, they contend that all his orders promulgated after this date which includes the questioned order bearing September 18, 1972 date but actually promulgated on October 18, 1972 are null and void following the recognized rule that it is not the date of the order that constitutes rendition thereof and gives it validity but the filing of such order with the Clerk of Court. Petitioners insist that Judge Ruiz resignation having been accepted by President of the Philippines on October 6, 1972, Judge Ruiz ceased to be judge, whether de jure or de facto.[5]

We find no merit in the claim of petitioners that Judge Vivencio M. Ruiz ceased to be judge de jure or de facto on October 6, 1972, the date indicated in the letter of the President of the Philippines accepting Judge Ruiz resignation, which letter was actually received by Judge Ruiz on October 21, 1972.

One of the ways of terminating official relations is by resignation. To constitute a complete and operative resignation of public office, there must be an intention to relinquish a part of the term, accompanied by the act of relinquishment[6] and a resignation implies an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce, and relinquish the office and the acceptance by competent and lawful authority.[7] In Our jurisprudence, acceptance is necessary for resignation of a public officer to be operative and effective, otherwise the officer is subject to the penal provisions of Article 238 of the Revised Penal Code which states that:

"Art. 238. Abandonment of office or position.- Any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service shall suffer the penalty of *arresto mayor*.

If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting, or punishing any of the crimes falling within Title One and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by *prision correccional* in its minimum and medium periods, and by *arresto mayor* if the purpose of such abandonment is to evade the duty of preventing, prosecuting or punishing any other crime."

Clearly, a public officer cannot abandon his office or position before his resignation is accepted but the incumbent official would not be in a position to determine the acceptance of his resignation unless he has been duly notified therefor. It must be noted that respondent Court of Appeals underscored the undeniable fact that while the President's letter of acceptance was dated October 6, 1972, it was completely processed only on October 20, 1972 and officially received by Judge Ruiz on October 21, 1972. Thus, respondent Court's holding that even if there were a strict interpretation as to when Judge Ruiz ceased to be a member of the Judiciary although petitioners maintain that the date of his cessation from office is October 6, 1972, still, his acts before the official notification of the acceptance of his resignation are those of a de facto officer, and therefore, valid, is correct. Respondent Court of Appeals has also pointed out correctly that the underlying principle of de facto acts is the protection of third parties and the public. It is for this reason of public interest that the Secretary (now Minister) of Justice

issued Circular No. 70 dated October 13, 1972, directing all categories of judges and fiscals to stay in their official stations and not to depart therefrom without previous permission from the Office (referring to Ministry of Justice) and to continue discharging their functions until notified of the action taken on their letters of resignation.[8]

Judge Alcantara rationalizes that Judge Ruiz having ceased to be a member of the Judiciary on either October 4 or 5th, 1972, that the President's acceptance of his resignation on October 6, 1972 being a mere formality, all his acts subsequent thereto are null and void and that Judge Ruiz may not even be considered a de facto officer as good faith is a requirement for a de facto officer and this element does not exist in the case of Judge Ruiz on account of the fact that all orders except the litigated order of September 18, 1972 bore October dates. Resolving this issue, respondent Court of Appeals ruled thus:

"It is indubitably clear that Judge Ruiz was acting as de facto officer, to say the least, when the order of September 18, 1972 was promulgated. Until said Judge Ruiz was officially notified of the acceptance by the President of the Philippines of his resignation, his acts must be considered valid and effective. Insofar as third persons and the public are concerned, it is immaterial whether or not he had prior unof-ficial knowledge of the acceptance of his resignation. It is not disputed that he received said letter of acceptance only on October 21, 1972. Obviously, it is only on this date that any act he may have done concerning the exercise of the functions and duties of a Judge, should be considered ineffective and invalid. The promulgation of the Order of September 18, 1972 was done on October 19, 1972, or three days before Judge Ruiz was officially notified of the acceptance by the President of the Philippines of his resignation. For all legal purposes, the promulgation is valid and effective. To hold that Judge Ruiz ceased to be a member of the Judiciary as of October 4, 1972, is a whimsical ruling. Consider the thousands of presidential appointees all over the country who tendered their resignation pursuant to the Letter of Instruction No. 11. Imagine the chaos it might have wrought if everyone of them were considered to have ceased from office on their respective dates of resignation. x.x x" (pp. 347-348, Records of Case)

Moreover, to hold that Judge Ruiz was guilty of bad faith on the sole ground that his order dated September 18, 1972 was filed only with the Clerk of Court only on October 18, 1972 when other orders after September 18 were filed earlier that October 18, 1972, is a sweeping conclusion strong, and undeniably indicative of great preju-dice and bias on the part of respondent Judge towards the actuations of Judge Ruiz whose resignation happened to have been accepted by the President." (p. 349, Records of Case).

We are in agreement with the above ruling of the appellate court.

Apropos the issue of the validity of Judge Ruiz' actuation relative to the assailed order of September 18, 1972, the case of *Tayko, et al. vs. Hon. Nicolas Capistrano, et al.*, 53 Phil. 866, which case has been cited by petitioners in defining what a de jure judge is, may well fortify the stance of herein private respondents. In this case petitioners prayed for a writ of prohibition enjoining respondent judge from taking cognizance of certain civil and criminal election cases in which the petitioners are parties. One of the grounds raised by petitioners to buttress their position was that respondent was already 65 years of age and has, therefore, automatically ceased as judge of the Court of First Instance of Negros Oriental and that he is neither a judge de jure nor de facto. Anent this particular issue, the Supreme Court ruled:

"The third ground upon which this petition is based is the most important and merits some consideration. It is well-settled that the title to the office of a judge, whether de jure or de facto, can only be determined in a proceeding in the nature of quo warranto and cannot be tested by prohibition. But counsel for the petitioner maintains that the respondent is neither a judge de jure or de facto and that, therefore, prohibition will lie. In this, counsel is undoubtedly mistaken.

x x x

"x x x (R)espondent Judge must be considered a judge de facto. His term of office may have expired, but his successor has not been appointed, and as good faith is presumed, he must be regarded as holding over in good faith. x x x"

As to the validity of the official acts of a judge de facto, this Court in the aforementioned case citing the Ruling Case Law[9] held:

"x x x The rightful authority of the judge in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, or by any other, excepting in the form especially provided by law. A judge de facto assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well-established principle dating from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a de facto judge are just as valid for all purposes as those of a de jure judge, so far as the public or third persons who are interested therein are concerned. The rule is the same in civil and criminal cases. The principle is one founded on public policy and convenience, for the right of no one claiming title or interest under or through the proceedings of an officer having an apparent authority to act would be safe, if it were necessary in every case to examine the legality of the title of such officer up to its original source, and the title or interest of such person were held to be invalidated by some accidental defect or flaw in the appointment, election or qualification of such officer, or in the rights of those from whom his appointment or election emanated; nor could the supremacy of the law be maintained, or their execution enforced, if the acts of the judge having a colorable, but not legal title, were to be deemed invalid. As in the case of the courts of record, the acts of a justice de facto cannot be called in question in any suit to which he is not a party. The official acts of a de facto justice cannot be attacked collaterally x x x. The title of a de facto officer cannot be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act, nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right to the office his title can be determined only in a quo warranto proceeding or information in the nature of a quo warranto at suit of the sovereign."

Petitioners in their assignment of errors impute to respondent Court of Appeals grave abuse of discretion for having granted private respondents' petition for certiorari despite the obvious authority and power of respondent Judge to issue his order dated January 26, 1973. In relation to this issue, respondent Court held, thus -

"While we agree with private respondents (referring to herein petitioners) that respondent Judge has the authority to amend or modify or annul any order rendered by the former Judge in the same case and in the same branch, we do not agree that this Court has no jurisdiction to entertain the present petition. The rule that an act of the respondent court is not correctible by the extraordinary remedy of certiorari when the error is an error of judgment and not of jurisdiction is not an inflexible one. The remedy against any ruling on the question whether or not the execution sale should be set aside, is a petition for certiorari, not appeal, in which the issue of grave abuse of discretion may be ventilated. The judgment has already become final and to require petitioners to go through appeal from the order sustaining the execution sale after it was annulled by the former presiding judge, would necessarily prolong the litigation. A superior court is justified to interpose its supervisory authority through the extraordinary remedies of certiorari, prohibition or mandamus when the petitioners' claim is clearly tenable or when the broader interest of justice or public interest requires it." [10]

The above ruling of the respondent court is a correct affirmation and re-statement of legal jurisprudence and We affirm the same.

Respondent court had ruled that Judge Alcantara committed grave abuse of discretion amounting to lack of jurisdiction in annulling the order of former Judge Ruiz thus warranting the issuance of the writs of certiorari and prohibition prayed for by herein private respondents. Respondent court underscored the fact that Judge Ruiz had set aside the execution sale conducted by the Sheriff on the grounds that it was defective and irregular and that the

sale price of the property sold was grossly inadequate and shocking to the conscience; that Judge Alcantara instead of finding that Judge Ruiz committed an error in annulling the execution sale on the aforementioned grounds, peremp-torily set aside the latter's order on the ground that he was no longer a member of the Judiciary and was not in good faith when he promulgated the order of September 18, 1972 and filed it with the Clerk of Court on October 21, 1972.

We sustain the authority of the Court of Appeals in ruling that Judge Alcantara committed grave abuse of discretion amounting to lack of jurisdiction when said judge annulled the September 18, 1972 order of Judge Ruiz on the ground that Judge Ruiz was no longer a member of the Judiciary when said order was promulgated on October 21, 1972. If the September 18, 1972 order is to be assailed and annulled, then a direct proceeding for quo warranto must be initiated and not merely by collateral attack as in the instant case, following the doctrine heretofore cited in *Tayko, et al. vs. Hon. Nicolas Capistrano, et al.*, 53 Phil. 866.

Petitioners assert that the decision of the Court of Appeals has the effect of reopening a previous proceeding already decided by the Supreme Court whose decision has long become final and conclusive. The proceeding referred to by petitioners is the petition for "Certiorari, Prohibition and Mandamus with Preliminary Injunction" docketed as CA-G.R. No. 00828-R entitled "*Bert Villalon, et al. vs. Hon. Vivencio M. Ruiz, et al.*" and which petitioners claim assailed not only the dismissal of their appeal and the validity of Judge Ruiz' order granting the writ of execution but more important, the regularity of the writ of execution as well as the public auction sale conducted by the Sheriff of Quezon City on January 31, 1972.

The petition in CA-G.R. No. 00828-R was dismissed by the Court of Appeals on March 13, 1972 and upon elevation to the Supreme Court, docketed as G.R. No. L-35174, the same was likewise dismissed and the dismissal had long become final and conclusive.

Petitioners' theory that the principle of *res judicata* is applicable, is without merit for the cause of action in CA-G.R. No. 00828-R is entirely different from the cause of action in CA-G.R. No. 01966-R, which is now subject of the herein petition for review. This is evident from the decision of Justice Juan P. Enriquez, ponente, in CA-G.R. No. SP-00828-R promulgated March 13, 1972, which begins as follows:

"Petitioners assail the order dated December 11, 1971, dismissing petitioners' appeal, Annex 1, for having been issued with grave abuse of discretion since they have already perfected their appeal within the reglementary period by the approval of the appeal bond and the record on appeal; and for an order to direct the respondent Judge and clerk of court to elevate and transmit the record on appeal and all other evidence received by them; and to award to them P10,000.00 as damages including an amount of P150.00 daily from January 31, 1972 until the vehicle is seized and levied upon on execution are completely restored to petitioners, with prayer for preliminary injunction." [11]

On the other hand, the thrust and main objective of the petitioners in CA-G.R. No. 01966-R is the annulment of the order of Judge Arsenio Alcantara dated January 23, 1973 annulling the order of Judge Vivencio M. Ruiz dated September 18, 1972. This issue having been brought up by petitioners in the court below, respondent Court, squarely meeting the issue, correctly ruled:

"Neither can we sustain private respondents' claim that the present petition is barred by *res judicata* and/or conclusiveness of judgment. Perusal of the records of CA-G.R. No. SP-00828, entitled, "*Bert Vilalon, et al., Petitioners, vs. Hon. Vivencio M. Ruiz, as Judge, CFI of Rizal, et al., Respondents,*" referred to by private respondents disclose that the parties in said case are the same parties in the present petition; that both petitions involve the same subject matter, that is, the validity of the Sheriff's sale of one taxicab and the Certificate of Public Convenience. However, we find no identity in the causes of action of the two petitions. In CA-G.R. No. SP-00828, the cause of action is the dismissal by Judge Ruiz of the appeal of petitioner on the ground that the

latter failed to perfect their appeal within the reglementary period, which in effect, sustained the validity of the execution sale that was conducted. In the present petition, the cause of action is the annulment by the respondent Judge of the order of Judge Ruiz declaring null and void the execution sale, on the ground that the said order of Judge Ruiz was promulgated and filed with the Clerk of Court when said Judge was no longer a member of the Judiciary. The two actions rest upon different set of facts. One is dismissal of appeal. The other is annulment of an order of a former judge. When the cause of action in the case is different from the cause of action in the first case, the plea of res judicata cannot be maintained." [12]

The principle of res judicata is embodied in Rule 39, Section 49, (b) and (c) which provides as follows:

"Sec. 49. Effect of judgments.- The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

x x x

(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

Section 49 (b) enunciates the concept of res judicata which is known as "bar by prior judgment" whereas Sec. 49 (c) is referred to as "conclusiveness of judgment." There is "bar by prior judgment" when, between the first case where the judgment was rendered and the second case which is sought to be barred, there is identity of parties, subject matter and cause of action. The judgment in the first case constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. But where between the first and second cases, there is identity of parties but no identity of cause of action, the first judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. [13]

In the first case, CA-G.R. No. SP-00828-R, We find no allegation or averment in the said Petition on the irregularities attendant to the sale at public auction and in fact the Court of Appeals in its decision thereon, did not discuss the same much less rule thereon. The issue of the irregularities attendant to the sale on public auction was not posed before the Court of Appeals; it was not a matter actually and directly controverted and determined by respondent Court. The main issues therein were limited to whether or not the appeal of the private respondents was filed in accordance with law and whether or not the writ of execution was improvidently issued by the trial court. And they are not raised as issues in CA-G.R. No. 01966-R which is now elevated before Us. Hence, it cannot be contended that the decision in CA-G.R. No. SP-01966-R reopened the decision of the same Court in CA-G.R. No. SP-00828-R. Consequently, petitioners' claim of res judicata is without basis.

Petitioners also impute abuse of discretion on the part of respondent court when it refused to hold private respondents under estoppel or barred by laches. The ruling of the respondent court to this issue that a party has the right to bring his grievance concerning the conducted execution in the court where the main case was decided is in accord with law and justice, to which We give full affirmance.

There is merit to the argument advanced by private respondents that the fact that they have participated in the

sales at public auction should not bar them from assailing the same. They point out the infirmities and anomalies attending the public auction sale which they could not have known before hand. Considering that the sale at public auction took place on March 14, 1972 and they filed their motion to annul said sale on March 18, 1972 or only four (4) days thereafter, that while it is true that the first sale at public auction was held on January 31, 1972, it was only on March 13, 1972 that the Court of Appeals rendered its decision in CA-G.R. No. SP-00828-R and shortly thereafter, private respondents filed with the trial court their motion to set aside the sales at public auction. We hold that private respondents are not barred or guilty of laches in seeking the annulment of said sales at public auction before the trial court.

The properties being litigated having been sold to private parties who are innocent purchasers for value, petitioners submit that the litigation has been rendered moot and academic. Petitioners aver that the Certificate of Public Convenience was sold to an innocent purchaser for value on March 17, 1972 prior to any action under-taken by private respondents. The said third party, Venefrida Almeda, thereafter filed her petition to operate the taxicab units before the Public Service Commission (now Board of Transportation) on April 5, 1972. The taxicab was, likewise sold to another third party on March 7, 1972. In the light of these facts, petitioners now argue that since the properties are personal and delivery by the Sheriff to the purchaser thereof made the latter the owner thereof from the time of said sale and delivery without need of court confirmation, citing *Phil. Bank of Commerce vs. Judge Macadaeg*, L-14174, October 31, 1960, 109 Phil. 981, and that despite their knowledge, private respondents have not taken any action against said third parties when the rules require that they be impleaded, citing *Balanga vs. Manalang*, L-18830, October 30, 1965, the petition filed by private respondents docketed as CA-G.R. No. SP-01966 entitled "*Corolla Transportation and Bert Villalon, petitioners, versus Hon. Arsenio Alcantara, et al., respondents* (which gave rise to the instant petition for review), has become moot and academic, according to petitioners.

We reject petitioners' theory of mootness. From the evidence on record, it appears that the sale to the alleged vendees of the certificates of public convenience took place on April 5, 1972, at which time the motion of private respondents to set aside the public auction sales were still pending resolution of the trial court. In fact, it was only on April 11, 1972, or six days after said sale, that the trial court denied the motion of private respondents. The vendees knew or should have known that the petitioners acquired said certificate at public auction as it was incumbent upon them to look into the records of the Public Service Commission as to the ownership of said certificates. From the records of the Commission, the vendees discovered or should have discovered that the private respondents had a pending motion to annul the sales at public auction. Hence, said vendees knew or should have known that, at the very least, there was a cloud, a defect in petitioners' title over the certificates of public convenience. Accordingly, the vendees could not, by any means, be denominated or considered as purchasers in good faith since "a purchaser who has knowledge of facts which should put him upon inquiry and investigation as to possible defects of the title of the vendor and fails to make such inquiry and investigation, cannot claim that he is a purchaser in good faith and has acquired a valid title thereto." (*Sampilo vs. Court of Appeals*, 55 O.G. No. 30, p. 57727, 103 Phil. 70)

Moreover, since petitioners filed with the Public Service Commission a petition for the approval of the said sale of the certificate but the same was held in abeyance because precisely of the pendency of the incidents with the trial court regarding the validity of the said sales at public auction, the petition of private respondents in CA-G.R. No. SP-01966-R is far from being moot and academic.

Petitioners' submission that respondent court erred in not dismissing the petition of private respondents in CA-G.R. No. SP-01966, in giving due course to the petition and subsequently granting the same because the petition was not in aid of the appellate jurisdiction of the Court of Appeals, the remedy of appeal was available to

the private respondents and that only purely questions of law were raised, is not impressed with merit. The rule is well-established that "the fact that a decision or order of a court of first instance has become final does not negate the original jurisdiction of the Court of Appeals to issue writs of mandamus, prohibition or certiorari, in connection with orders or processes issued by the trial court incidental to the execution of said final decision or order." (Delos Santos vs. Rodriguez, et al., 22 SCRA 451, 455-456). To sustain petitioners' theory would result to injustice for "those adversely affected by action taken by the trial court would be left without any relief, even if its processes or orders have been issued improperly or erroneously." (Delos Santos vs. Rodriguez, et al., supra, p. 46).

As to petitioners' contention that private respondents could still avail themselves of the remedy of appeal, this contention is, indeed, contradiction exemplified. Petitioners, after stating in their Brief that "the Court of Appeals did not take cognizance of the fact that the judgment on the merits in the lower court has long been final and executory and, therefore, the right to appeal from said judgment to the Court of Appeals no longer exists," (p. 58) and therefore, appeal was no longer available to private respondents, cannot contradict themselves by insisting that private respondents should have interposed an appeal and not the petition for certiorari.

Assuming, *gratia arguendi*, that private respondents could still avail of the remedy of appeal, the question is whether such appeal is effective, speedy and adequate. If not, private respondents may avail of a petition for certiorari in which the issue of grave abuse of discretion may be raised and ventilated. In *Phil. Commercial and Industrial Bank, et al. vs. The Hon. Venicio Escolin, et al.*, L-27860 & L-27896, March 29, 1974 and *Testate Estate of the Late Linnie Jane Hodges, et al. vs. Lorenzo Carles, et al.*, L-27936 & L-27937, March 29, 1974, 56 SCRA 266, the Supreme Court laid down the following rules:

"In determining whether or not a special civil action of certiorari or prohibition may be resorted to in lieu of appeal, in instances wherein lack or excess of jurisdiction or grave abuse of discretion is alleged, it is not enough that the remedy of appeal exists or is possible. It is indispensable that taking all the relevant circumstances of the given case, appeal would better serve the interests of justice. Obviously, the longer delay, augmented expense and trouble and unnecessary repetition of the same work attendant to the present multiple appeals, which, after all, deal with practically the same basic issues that can be more expeditiously resolved or determined in a single special civil action, make the remedies of certiorari and prohibition, pursued by petitioner, preferable, for purposes of resolving the common basic issues raised in all of them, despite the conceded availability of appeal."

And no less forceful, authoritative and controlling is the pronouncement in the separate opinion in Hodges case, supra, which We quote:

"Such disposition of the question of timeliness deemed as 'mandatory and jurisdictional' in a number of cases merits the writer's concurrence in that the question raised has been subordinated to the paramount considerations of substantial justice and a 'liberal interpretation of the rules' applied so as not to derogate and detract from the primary intent and purpose of the rules, viz 'the proper and just determination of a litigation' - which calls for 'adherence to a liberal construction of the procedural rules in order to attain their objective of substantial justice and of avoiding denials of substantial justice due to procedural technicalities.'" (p. 428)

In the light of the above rulings and considering the facts and circumstances of the instant case, We opt to take action and resolve the petition at bar in the interests of speedy and substantial justice, over and above technicalities and intricacies of procedural maze.

We find petitioners' assignment of errors to be without merit, hence their petition must be denied.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby AFFIRMED, with costs against petitioners.

SO ORDERED.

Makasiar, (Acting Chairman), De Castro, and Melencio-Herrera, JJ., concur.

Abad Santos, J., in the result.

Teehankee, J., is on official leave.

Fernandez, J., took no part.

[1] Former Second Division, Reyes, A., J., ponente, with Concepcion Jr., J. and Fernandez, R., J., concurring.

[2] Rollo, p. 350.

[3] Rollo, pp. 334-338.

[4] Petition, Annex 1, Rollo, pp. 142-144.

[5] See pp. 165-169, Records - Annex "A" - Motion to Annul and/or Set Aside Order dated September 18, 1972; pp. 193-196, Records - Annex "D" - Reply to Opposition of Defendants (referring to Corolla) dated December 13, 1972; pp. 296-298, Records - Annex "G" - Opposition to Motion for Reconsideration of Order Dated January 26, 1973; pp. 262--268, Records - Annex "V" - Answer in CA--G.R. No. 01966-R; pp. 311-318, Records - Annex "V-1" - Memorandum for Respondents in CA-G.R. No. SP-01966.

[6] Gonzales v. Hernandez, L-15482, May 30, 1961, 2 SCRA 228, 232, citing 43 Am. Jur., p. 22.

[7] Gonzales, supra, citing Nome v. Rice, 3 Alaska 602.

[8] p. 236, Rollo.

[9] 15 R.C.L. 519-521.

[10] pp. 343-344, Rollo.

[11] pp. 66-67, Rollo.

[12] pp. 345-346, Rollo.

[13] See Comilang vs. Court of Appeals, et al., L-37312, July 15, 1975, 65 SCRA 77-78.

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