

**PAZ MERCADO, CAROLINA S. CHICO, LUCIANA CABRERA,
JOAQUINIGNACIO, ELMER FLORES, AVELINA C. NUCOM, ET AL.,
PETITIONERS, VS. HON. COURT OF APPEALS, HON. BENIGNO PUNO,
LOLITA C. BUL...**

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

Ponente: NARVASA, J.

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NARVASA, J.:

The question presented by this appeal is whether or not the special civil action of certiorari may be properly resorted to by a party aggrieved by a judgment of a Regional Trial Court (or Court of First Instance) — which became final because not appealed within the reglementary period — to bring about its reversal on the ground that the Court had applied the wrong provision of the Civil Code, and had rendered summary judgment at the instance of the defendants without receiving evidence on the issue of damages allegedly suffered by the plaintiffs, thereby denying them due process.

The private respondents, hereafter simply referred to as the Bulaong Group, had for many years been individual lessees of stalls in the public market of Baliuag, Bulacan; from 1956 to 1972, to be more precise. The market was destroyed by fire on February 17, 1956; the members of the Bulaong Group constructed new stalls therein at their expense; and they thereafter paid rentals thereon to the Municipality of Baliuag.

Sometime in 1972, the members of the group sub-leased their individual stalls to other persons, hereafter simply referred to as the Mercado Group. After the Mercado Group had been in possession of the market stalls for some months, as sublessees of the Bulaong Group, the municipal officials of Baliuag cancelled the long standing leases of the Bulaong Group and declared the persons comprising the Mercado Group as the rightful lessees of the stalls in question, in substitution of the former. The municipal authorities justified the cancellation of the leases of the Bulaong Group by invoking the provisions of Municipal Ordinance No. 14, dated December 14, 1964, which prohibited the sub-leasing stalls by the lessees thereof, as well as a directive of the Office of the President (contained in a letter of Executive Secretary R. Zamora dated May 29, 1973) requiring enforcement of said Ordinance No. 14. Recognition of the Mercado Group's rights over the stalls was subsequently manifested in Municipal Ordinance No. 49, approved on July 5, 1973.

The members of the Bulaong Group sued. They filed several individual complaints with the Court of First Instance seeking recovery of their stalls from the Mercado Group as well as damages.[1] Their theory was anchored on their claimed ownership of the stalls constructed by them at their own expense, and their resulting right, as such owners, to sub-lease the stalls, and necessarily, to recover them from any person withholding possession thereof from them. Answers were seasonably filed in behalf of the defendants, including the Municipality of Baliuag,[2] after which a pre-trial was held in the course of which the parties stipulated upon practically all the facts.

The Mercado Group thereafter filed motions for summary judgment, asserting that in light of the admissions made

at the pre-trial and in the pleadings, no issue remained under genuine controversion. The Bulaong Group filed an opposition which, while generally stating that there were "other material allegations in the amended complaint(s)" upon which proof was needful, actually identified only one issue of fact requiring "formal submission of evidence," i.e., the claim for actual damages "**** the exact amount of which shall be proven at the trial." The Bulaong Group then filed a "Motion to Accept Affidavits and Photographs as Annexes to the Opposition to the Motion for Summary Judgment," which affidavits and photographs tended to establish the character and value of the improvements they had introduced in the market stalls. As far as the records show, no objection whatever was presented to this motion by the Mercado Group (movants for summary judgment), and the affidavits and photographs were admitted by the Trial Court. Specifically, the Mercado Group never asked, either in their motion for summary judgment or at any time after having received a copy of the motion to accept affidavits and photographs, etc., that a hearing be scheduled for the reception of evidence on the issue of the Bulaong Group's claimed actual damages.

On October 24, 1975, respondent Judge rendered a summary judgment in all the cases.[3] It rejected the claim of the Municipality of Baliuag that it had automatically acquired ownership of the new stalls constructed after the old stalls had been razed by fire, declaring the members of the Bulaong Group to be builders in good faith, entitled to retain possession of the stalls respectively put up by them until and unless indemnified for the value thereof. The decision also declared that the Bulaong and Mercado Groups had executed the sub-letting agreements with full awareness that they were thereby violating Ordinance No. 14; they were thus in part delicto, and hence had no cause of action one against the other and no right to recover whatever had been given or demand performance of anything undertaken. The judgment therefore decreed (1) the annulment of the leases between the Municipality and the individuals comprising the Mercado Group (the defendants who had taken over the original leases of the Bulaong Group); and (2) the payment to the individual members of the Bulaong Group (the plaintiffs) of the stated, adjudicated value of the stalls, with interest IF —

"**** the Municipality *** would insist in its to right rescind or annul its contracts of leases with the said plaintiffs over the lots on which the stalls in question are erected; for this purpose, since the private defendants become immediate beneficiaries to a transfer of possession over the stalls in question, the Municipality *** may require said private defendants **** to pay the plaintiffs the aforesaid amounts in the event that said private defendants and the Municipality *** should elect to oust the plaintiffs from the stalls in question and from the lots on which said stalls are constructed; however, unless the plaintiffs shall have been fully paid of the value of their stalls in the amounts mentioned above, they shall have the right to remain in their respective stalls and in case the private defendants shall refuse to pay for the value of the stalls in this event, the ejectment of the said private defendants from the stalls in question shall be ordered ***."

The Mercado Group and the Municipality filed on November 14, 1975, motions for reconsideration of the summary judgment, notice of which had been served on them on November 3, 1975. These were denied, and notice of the order of denial was received by them on December 18, 1975. On January 7, 1976, the Mercado Group filed a notice of appeal, an appeal bond and a motion for extension of time to file their record' on appeal. But by Order dated January 9, 1976, the Trial Court directed inter alia the execution of the judgment, at the instance of the Bulaong Group and despite the opposition of the Mercado Group, adjudging that its decision had become final because the appeal documents had "not been seasonably filed." The writ was issued, and the Mercado Group's motion to quash the same and to re-open the case was denied.

The Group went to the Court of Appeals, instituting in that court a special civil action of certiorari and prohibition[4] "to annul that portion of the summary judgment **** awarding damages to private respondents (the Bulaong Group), and to restrain the respondent Judge and the Provincial Sheriff of Bulacan from enforcing the same." That Court rendered judgment on May 14, 1976,[5] holding that (1) the summary judgment was properly

rendered, respondent Judge (having) merely adhered to the procedure set forth by the *** Rule (34)"; and if "he committed error in the appreciation of the probative values of the affidavits and counter-affidavits submitted by the parties, such error is merely one of judgment, and not of jurisdiction"; (2) the Mercado Group had not been denied due process "for failure of respondent Judge to conduct a formal trial *** (to receive) evidence on the question of damages," since the parties were afforded the right, in connection with the motion for summary judgment, to speak and explain their side of the case by means of affidavits and counter-affidavits; and (3) since the Mercado Group had attempted to perfect an appeal from the summary judgment which was however futile because their appeal papers "were filed beyond the reglementary period," the judgment had become final and certiorari or prohibition could not be availed of as a substitute for the group's lost appeal. Once again, the Mercado Group moved for reconsideration of an adverse judgment, and once again were rebuffed.

The members of the Mercado Group are now before this Court on an appeal by certiorari, this time timely taken, assailing the above rulings of the Court of Appeals. Their appeal must fail for lack of merit. No error can be ascribed to the judgment of the Court of Appeals which is hereby affirmed in toto.

Upon the factual findings of the Court of Appeals, by which this court is bound, and taking account of well established precedent from which there is no perceivable reason in the premises to depart, there is no question that the petitioners (the Mercado Group) had failed to perfect an appeal from the summary judgment within the reglementary period fixed by the Rules of Court. According to the Appellate Court —

"The summary judgment rendered by respondent Judge, being a final adjudication on the merits of the said cases, could have been appealed by the petitioners. In point of fact, petitioners did attempt to perfect an appeal from said judgment, but the attempt proved futile because their notice of appeal, appeal bond and motion for extension of time to file record on appeal were filed beyond the reglementary period. The record discloses that they received copy of the summary judgment on November 3, 1975; that on November 14, 1975, or after the lapse of eleven (11) days from receipt of said decision, they filed their motion for reconsideration of said decision; that on December 18, 1975, they received copy of the order denying their motion for reconsideration; and that they did not file their notice of appeal, appeal bond and motion for extension of time until January 7, 1976, or twenty (20) days after receipt of the order denying their motion for reconsideration. The notice of appeal, appeal bond and motion for extension were, therefore, presented one (1) day after the expiration of the 30-day period to perfect an appeal. Thus, respondent Judge correctly disallowed the appeal."

The Appellate Court's computation of the period is correct, and is in accord with Section 3, Rule 41 of the Rules of Court providing that from the 30-day reglementary period of appeal shall be deducted the "time during which a motion to set aside the judgment or order or for a new trial has been pending." [6]

Significantly, the petitioners have made no serious effort to explain and excuse the tardiness of their appeal. What they have done and continue to do is to insist that the special civil action of certiorari is in truth the proper remedy because the judgment is void. The judgment is void, they say, because they were denied due process, as "respondent Judge granted exorbitant damages, without reliable proof, and without giving petitioners the chance to prove their claim that private respondents are not entitled to damages, and conceding that they are, the damages are much lower than that awarded by the respondent Judge." [7] According to them, since the matter of damages was clearly a controverted fact, the Court had absolutely no jurisdiction to determine it on mere affidavits.

There can be no debate about the proposition that under the law, the Trial Court validly acquired jurisdiction not only over the persons of the parties but also over the subject matter of the actions at bar. The parties composing the Mercado Group cannot dispute this; they recognized the Court's competence when they filed their answers to the complaints without questioning the Court's jurisdiction of the subject-matter, indeed neither at that time nor at any other time thereafter did any one of them ever raise the question.

Now, jurisdiction, once acquired, is not lost by any error in the exercise thereof that might subsequently be committed by the court. Where there is jurisdiction over the person and the subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction.[8] And when a court exercises its jurisdiction, an error committed while engaged in that exercise does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of jurisdiction and every erroneous judgment would be a void judgment. This, of course, can not be allowed. The administration of justice would not survive such a rule.[9] Moreover, any error that the Court may commit in the exercise of its jurisdiction, being merely an error of judgment, is reviewable only by appeal, not by the special civil action of certiorari or prohibition.[10]

The petitioners do not dispute the propriety of the rendition of a summary judgment by the Court a quo, a remedy that they themselves had in fact asked for. What they challenge is the inclusion in that judgment of an award of damages on the basis merely of affidavits, without actual reception of evidence thereon at a hearing set for the purpose.

The challenge is not however justified by the peculiar circumstances of the case at bar. The petitioners, to repeat, were the parties who, as defendants, had moved for summary judgment. They knew or were supposed to know that, as stated by the Rules, their motion would be granted if "the pleadings, depositions, and admissions on file, together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that *** (they are) entitled to a judgment as a matter of law." [11] They knew that the private respondents, as plaintiffs, had in fact opposed their motion and had pointed out precisely the need for a hearing on the controverted matter of damages. That they did not join in the move to have a hearing on the issue of damages is an indication that they considered it unnecessary. When the respondents (plaintiffs) — apparently in view of the Court's and the defendants' indifference to the notion of having a hearing on the matter of damages, implicitly indicating the belief of the superfluity of a hearing - presented affidavits and depositions to prove the value of the improvements, for which they were seeking reimbursement, the petitioners (defendants) did not ask that the matter be ventilated at a hearing, or submit counter-affidavits, as was their right. They made no response whatever. They were evidently quite confident of obtaining a favorable judgment, and that such an eventuality would preclude the claimed reimbursement or recovery of damages. As it turned out, they were wrong in their prognostication.

In any event, even assuming error on the Court's part in relying on the unopposed affidavits and photographs as basis for an award of damages, it was, as the Appellate Court has opined, not an error of jurisdiction under the circumstances, but one in the exercise of jurisdiction, to correct which the prescribed remedy is appeal. This is not to say that where a Court determines the propriety of a summary judgment — which it may do on the basis of the pleadings, depositions, admissions and affidavits submitted by the parties — and discovers that there are genuine issues of fact, these genuine issues may nonetheless be adjudicated on the basis of depositions, admissions or affidavits and not of evidence adduced at a formal hearing or trial. This is not the rule.[12] The rule is that it is only the ascertainment of the character of the issues raised in the pleadings — as genuine, or sham or fictitious — which can be done by depositions, admissions, or affidavits; the resolution of such issues as are found to be genuine should be made upon proof proffered at a formal hearing. The peculiar circumstances of the case at bar, already pointed out, operate to exclude it from the scope of the rule. It is an exception that should however be taken, as affirming and not eroding the rule.

The petitioners' other theory is more tenable, but will not appreciably advance their cause. They suggest that it was a mistake for the Trial Court to have accorded to the individuals of the Bulaong Group the stalls and builders in good faith in accordance with Article 526 of the Civil Code. They are correct. It was indeed error for the Court

to have so ruled. The members of this group were admittedly lessees of space in the public market; they therefore could not, and in truth never did make the claim, that they were owners of any part of the land occupied by the market so that in respect of any new structure put up by them thereon, they could be deemed builders in good faith. To be deemed a builder in good faith, it is essential that a person assert title to the land on which he builds; i.e., that he be a possessor in concept of owner,[13] and that he be unaware "that there exists in his title or mode of acquisition any flaw which invalidates it." [14] It is such a builder in good faith who is given the right to retain the thing, even as against the real owner, until he has been reimbursed in full not only for the necessary expenses but also for useful expenses.[15] On the other hand, unlike the builder in good faith, a lessee who "makes in good faith useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased," can only claim payment of "one-half of the value of the improvements" or, "should the lessor refuse to reimburse said amount, *** remove the improvements, even though the principal thing may suffer damage thereby." [16]

But this error does not go to the Trial Court's jurisdiction. It is an error in the exercise of jurisdiction, which may be corrected by the ordinary recourse of appeal, not by the extraordinary remedy of certiorari. It is an error that in the premises can no longer be set aright.

The summary judgment rendered by respondent Judge on October 24, 1975 was not an interlocutory disposition or order but a final judgment within the meaning of Section 2, Rule 41 of the Rules of Court. By that summary judgment the Court finally disposed of the pending action, leaving nothing more to be done by it with respect to the merits, thus putting an end to the litigation as its level.[17]

The remedy available to the petitioners against such a final judgment, as repeatedly stated, was an appeal in accordance with the aforementioned Rule 41 of the Rules of Court.[18] But as observed in an analogous case recently resolved by this Court.[19]—

"*** instead of resorting to this ordinary remedy of appeal, *** (the petitioners) availed of the extraordinary remedy of a special civil action of certiorari in the *** (Court of Appeals), under Rule 65 of the Rules of Court. The choice was clearly wrong. The availability of the right of appeal obviously precluded recourse to the special civil action of certiorari. This is axiomatic. It is a proposition made plain by Section 1 of Rule 65 which lays down as a condition for the filing of a certiorari petition that there be 'no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.'"

In the case at bar, the petitioners lost their right to appeal by failing to avail of it seasonably. To remedy that loss, they have resorted to the extraordinary remedy of certiorari, as a mode of obtaining reversal of the judgment from which they failed to appeal. This cannot be done. The judgment was not in any sense null and void ab initio, incapable of producing any legal effects whatever, which could never become final, and execution of which could be resisted at any time and in any court it was attempted.[20] It was a judgment which might and probably did suffer from some substantial error in procedure or in findings of fact or of law, and could on that account have been reversed or modified on appeal. But since it was not appealed, it became final and has thus gone beyond the reach of any court to modify in any substantive aspect. The remedy to obtain a reversal or modification of the judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the Court rendering the judgment is its lack of jurisdiction of the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in its decision. The existence and availability of the right of appeal proscribes a resort to certiorari, one of the requisites for availment of the latter remedy being precisely that "there should be no appeal." [21] There may to be sure, be instances when certiorari may exceptionally be permitted in lieu of appeal, as when their appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effect of the judgment complained of, or to avoid future

litigations,[22] none of which situations obtains in the case at bar. And certain it is that the special civil action of certiorari cannot be a substitute for appeal, specially where the right to appeal has been lost through a party's fault or inexcusable negligence.[23]

That the judgment of the Trial Court applied the wrong provision of the law in the resolution of the controversy has ceased to be of any consequence. As already discussed, instead of the legal provision governing lessees' rights over improvements on leased realty, the judgment invoked that relative to the rights of builders in good faith.[24] But the error did not render the judgment void. A judgment contrary to the express provisions of a statute is of course erroneous, but it is not void; and if it becomes final and executory, it becomes as binding and effective as any valid judgment; and though erroneous, will henceforth be treated as valid, and will be enforced in accordance with its terms and dispositions.[25]

WHEREFORE, the petition is dismissed, with costs against the petitioners.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Docketed as Civil Cases Numbered 41G-B, 417-B, 41S-B, 427-B, 431-B, assigned to Br. IV of the CFI, Bulacan.

[2] The Municipality of Baliuag was made a party in all the cases except Civil Case No. 431-B.

[3] Rollo, pp. 37-49.

[4] Docketed as CA-G.R. No. SP-05002-R.

[5] Escolin, J., ponente; Vasquez and Leuterio, JJ., concurring.

[6] Under Sec. 39 to B.P. BLG. 129 (eff. Aug. 14, 1981), the period of appeal has been reduced to 15 days, counted from notice of the final order, resolution, award, judgment or decision appealed from, except in habeas corpus cases, in which the period is set at 48 hours from notice, and in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court, in which the appeal period has been retained at 30 days.

[7] Citing *Fabie v. Ngo Boo Soo*, 84 Phil. 857 and *Ibañez, et al. v. North Negros Sugar Co., et al.*, G.R. No. L-6790, March 28, 1955.

[8] Moran, *Comments on the Rules*, 1979 ed., Vol. 1, p. 51, citing: *Herrera v. Barreto*, 25 Phil. 245; *Gala v. Cui*, 25 Phil. 522; *De Fiesta v. Llorente*, 25 Phil. 554; *Mapa v. Weissenhagen*, 29 Phil. 18; *De la Cruz v. Moir*, 36 Phil. 213; SEE also *Feria*, *Civil Procedure*, 1969 ed., p. 15, citing *Herrera v. Barreto*, *supra*, and *Castro v. Peña*, 80 Phil. 488.

[9] *De la Cruz v. Moir*, 36 Phil. 213, 219, cited in *Feria*, *op. cit.*, p. 15.

[10] Moran, *op. cit.*, citing *Henderson v. Tan*, L-03223, Oct. 10, 1950; *Palma v. Q & S. Inc.*, L-20366, May 19, 1966, 17 SCRA 97, 100.

[11] Sec. 3, Rule 34, *Rules of Court*; italics supplied.

[12] SEE *Gatchalian v. Pavilin*, 6 SCRA 508; *Jugador v. De Vera*, 94 Phil. 704; *Vergara v. Suelto*, G.R. No. 74766, Dec. 21, 1987; *Moore's Federal Practice*, pp. 3184-5; *Feria*, J., *Civil Procedure*, 1969 ed., pp. 480-481; Moran, *Comments on the Rules*, Vol. 2, pp. 184-186.

[13] ART. 525. Civil Code: Lopez., Inc. v. Phil. Eastern Trading Co., Inc., 98 Phil. 348.

[14] ART. 526. Civil Code; Granados v. Monton, 86 Phil. 42; Arriola v. Gomez de la Serna, 14 Phil. 627; SEE also Manotoc Realiv, Inc. v. C.A., 134 SCRA 329, citing Carom v. Laureta, 103 SCRA 7.

[15] ART. 546, Civil Code: Policarpio v. C.A, 129 SCRA 51; Sarmiento v. Agana, 120 SCRA 122; cf. Quelo v. C. A'.. 122 SCRA 206.

[16] ART 1678, Civil Code.

[17] Destileria Limtuaco & Co., Inc. v. IAC, et al., G.R. No. 74369, Jan. 29, 1988, citing cases collated in Moran, Comments on the Rules, 1979 ed.. Vol. 2, p. 388.

[18] The rule was amended on August 14, 1981 by Sec. 39 of the Judiciary Reorganization Act of 1980 (Batas Pambansa Big. 129), and the Interim Rules promulgated by this Court in implementation of said Act (Sees. 16, 18-20).

[19] Destileria Limtuaco & Co., Inc. v. IAC, supra.

[20] SEE Makabingkil v. PHHC, 72 SCRA 326, 343, citing Banco Espanol- Filipino v. Palanca, 37 Phil. 291; Rosensons, Inc. v. Jimenez, 68 SCRA 24.

[21] Sec. 1, Rule 65, Rules of Court.

[22] St. Peter Memorial Park, Inc. v. Campos, Jr., 63 SCRA 180, citing Jose v. Zulueta, 2 SCRA 578; Botelho Shipping Corp. v. Leuterio, 8 SCRA 127; People v. Zulueta, 89 Phil. 756; Alfonso v. Yatco, 80 Phil. 407; Ramos v. Central Bank, 41 SCRA 584; SEE also Mayol v. Blanco, 61 Phil. 547.

[23] De la Cruz v. IAC, 134 SCRA 417; Batagtas Realty Corp. v. Romillo, Jr., 130 SCRA 415; Lobetev. Sundiam, 123 SCRA 95; Velasco v. Segundo, 117 SCRA 573; People v. Villanueva, 110 SCRA 465.

[24] SEE page 7, supra.

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