

**QUIRICO CONCEPCION, PETITIONER, VS. PRESIDING JUDGE,
BRANCH V, COURT OF FIRST INSTANCE OF BULACAN, FIFTH
JUDICIAL DISTRICT, E. GERMAR CRUZ, JR., DEPUTY PROVINCIAL
SHERIFF, APOLO...**

G.R. No. L-35489. December 15, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

The instant special civil action for certiorari and prohibition assails the Order of respondent judge issued in Civil Case No. SM-243 entitled "Apolonio Ramos, Paulina Ramos, Felipe Hilario, Macario Ramos, Teodoro Ramos, Albino Ramos and Hermogenes Hilario, plaintiffs, versus Quirico Concepcion, defendant," for ejectment and damages, dated July 3, 1972 denying petitioner's Petition for Relief from Judgment for having been filed out of time and the Order dated July 5, 1972 directing the issuance of a writ of demolition of that portion of petitioner's house standing on private respondents' property. In the Resolution of this Court adopted September 4, 1972, a temporary restraining order was issued.

The antecedent facts are as follows:

In January, 1969, a complaint for ejectment and damages docketed as Civil Case No. SM-243 was filed by herein private respondents against herein petitioner in the Court of First Instance of Bulacan, Fifth Judicial District, at Sta. Maria, Bulacan. In said complaint, private respondents claimed ownership in fee simple of a parcel of land known as Lot No. 2604-B covered by Transfer Certificate of Title No. T-86595, located at Sitio Masuso, Barrio Bunsuran, Municipality of Pandi, Bulacan with an area of about 13,519 square meters, more or less; that sometime in October, 1958, petitioner Quirico Concepcion, in connivance with the spouses Irene Ramos and Aurelio Agustin, forcibly took possession of said land claiming ownership in themselves, thereby compelling private respondents to institute Civil Case No. 1820 for the recovery of said land and during the pendency of said Civil Case No. 1820, Quirico Concepcion was able to build a house of strong materials within the disputed land, occupying an area of about 300 square meters, more or less; that Civil Case No. 1820 was finally decided by the Court of Appeals in CA-G.R. No. 27842-4 in favor of private respondents who thereupon demanded that petitioner turn over possession of the property to them. Petitioner, however, filed suit against private respondents in the Court of Agrarian Relation (Fifth Regional District) docketed as CAR Case No. 2032 claiming that he is an agricultural lessee of private respondents, which was however later dismissed upon a finding that there was no merit to petitioner's claim.

By virtue of a writ of possession issued in Civil Case No. 1820, private respondents were finally placed in possession of their land on January 29, 1969 but petitioner refused to give up possession thereof nor to account for the palay harvested and appropriated by him. Private respondents, therefore, prayed for the immediate demolition of petitioner's house erected on the land and for the latter and all persons claiming under him to vacate the premises, among other reliefs.

Petitioner filed his Answer to the above complaint alleging that he had been a tenant and agricultural lessee of the landholding since October, 1958 and that his house was erected prior to 1958 in the homelot designated by the former legal possessors/landholders of the property and that the Court (CFI) has no jurisdiction over the parties or the subject matter of the case which should be filed, settled and resolved in the Court of Agrarian Relations.

Thereafter, the parties assisted by their respective counsel, submitted the following Compromise Agreement dated December 18, 1969, to wit:

"COMPROMISE AGREEMENT"

I. That the parties agree that the plaintiffs (private respondents) are the owners of that parcel of land with an area of about 13,519 square meters, and covered by Transfer Certificate of Title No. T-86595;

II. That the defendant (petitioner) will continue to work on the land until December 31, 1971, not as a tenant, with the following conditions:

1. That from the produce for the year 1969, fifteen cavans shall be delivered to the plaintiffs (private respondents) not later than January 1970;
2. That from the produce for the year 1970, fifteen cavans shall be delivered to the plaintiffs (private respondents) not later than January 1971; and
3. That from the produce for the year 1971, fifteen cavans shall be delivered to the plaintiffs (private respondents) not later than January 1972,

III. That the defendant (petitioner) shall not molest or in any way interfere with the plaintiffs (private respondents) in their house built on the property in question, and the plaintiffs (private respondents) shall be free to introduce improvements on portions of the land not being tilled by the defendant (petitioner);

IV. That the defendant (petitioner) shall deliver possession of the property in question unto the plaintiffs (private respondents) and vacate the premises not later than December 31, 1971; and

V. That the parties waive their respective claims without pronouncement as to attorney's fees and costs.

Failure of the parties to comply with any of the terms and conditions above set forth shall entitle the aggrieved party to an immediate execution.

WHEREFORE, it is respectfully prayed that judgment be rendered by this Honorable Court based on and pursuant to the foregoing agreement.

Sta. Maria, Bulacan, December 18, 1969,

APOLONIO RAMOS, ET AL, represented by APOLONIO RAMOS, Plaintiffs.

Assisted by: Atty. Esteban Manuel

(Counsel for the Plaintiffs)

7-A P. Pelaez St., Proj. 4,

Quezon City

QUIRICO CONCEPCION, Defendant.

Assisted by: Atty. Romerico Flores

(Counsel for the Defendant)

2nd Flr., Hernando Bldg,

Malolos, Bulacan"

The lower court rendered its decision on the same date, December 18, 1969, quoting and approving the fore-going agreement and ordering the parties to strictly comply with its terms and conditions.

It further appears that the parties submitted a Supplementary Agreement dated March 12, 1970 to the effect that the fifteen (15) cavans of palay for private respondents shall be delivered "at the site of the landholding and each cavan to weigh forty-five (45) kilos."

On April 15, 1972, a writ of execution was issued commanding the Deputy Sheriff to cause petitioner to vacate the premises covered by TCT No. T-86595 and to deliver possession thereof to private respondents. On April 25, 1972, respondent Deputy Sheriff E. Germar Cruz, Jr. wrote herein petitioner a letter giving him ten (10) days from receipt thereof to remove all his personal properties found within the said landholding and informing him that on May 8, 1972, private respondent Apolonio Ramos or his representative would be placed in possession of the property.

On May 16, 1972, petitioner filed with the same court and in the same case, through a new counsel, a Petition for Relief from Judgment with Motion for Issuance of Writ of Preliminary Injunction and Urgent Motion to Recall and/or To Quash Writ of Execution and To Set Aside Judgment Approving the Compromise Agreement With Substitution of Counsel. In this petition, petitioner contended, among others, that the decision of the lower court dated December 18, 1969 was void ab initio as the same was based on a compromise agreement which was contrary to law, public morals and public policy; that the writ issued to execute said decision was vague, indefinite and not specific; and that the court a quo had no jurisdiction over the nature and/or subject matter of the action. Private respondents filed an Opposition arguing that the judgment of the court below sought to be vacated had already been entered on December 18, 1969, hence had long become final and executory.

In an Order dated July 3, 1972, the lower court denied petitioner's above-mentioned Petition for Relief from Judgment for having been filed out of time. Subsequently, another Order dated July 5, 1972 was issued by the court below directing the issuance of a writ of demolition of that portion of petitioner's house standing on private respondents' property.

Attributing grave abuse of discretion to the lower court in issuing the aforesaid Orders, petitioner now come to Us to set aside the same through the instant special civil action for certiorari and prohibition with injunction. By Resolution dated September 4, 1972, this Court authorized petitioner to litigate as a pauper and as indicated earlier, directed the issuance of a temporary restraining order.

As required by Us, private respondents herein filed their Answer to the petition and contended that the Compromise Agreement and Supplemental Agreement were entered into after hearing on the merits following a pre-trial order issued by the lower court containing admissions of facts by the parties and admissions on the authenticity of the documents presented, and after the presiding Judge and petitioner's counsel in the court below had found that there was no truth to petitioner's claim of tenancy; that petitioner's Petition for Relief from Judgment was filed in the lower court out of time; that said Petition was filed in bad faith for during the deliberations on the Compromise Agreement in open court, private respondents were persuaded to waive their claim over the produce of the land covering a 9-year period upon petitioner's undertaking to vacate the premises not later than December 31, 1971.

After the case had been considered submitted for decision, petitioner filed a Motion dated March 17, 1973 to cite private respondents and their counsel in contempt of court allegedly for having filed in the lower court a motion

seeking to implement and carry out the Compromise Agreement subject of the instant certiorari proceedings, in defiance of the temporary restraining order issued by this Court. Ordered to comment on the foregoing Motion, private respondents contended that the above restraining order merely enjoins the implementation and enforcement of the (a) writ of execution which commanded petitioner to vacate the premises in question, and the (b) order of demolition, but does not prohibit private respondents from receiving palay harvested from their own property; that it was petitioner himself who prompted private respondents to take delivery of fifteen (15) cavans of said palay from the 1972 harvests, but refused delivery unless private respondents would sign a receipt that the palay was in payment of yearly rentals under a contract of tenancy; and that private respondents' right to receive a certain amount of palay harvested from their own land is not lost even if petitioner were to succeed in obtaining a permanent restraining order from this Tribunal.

The Court deferred action on petitioner's above Motion for contempt until the case is decided on the merits.

The principal issue to be resolved in this case is whether or not the lower court acted with grave abuse of discretion and/or without jurisdiction in denying petitioner's Petition for Relief from Judgment for having been filed out of time and in ordering the issuance of a writ of demolition.

The pertinent provisions of Rule 38 of the Revised Rules of Court on "Relief from Judgments, Orders or Other Proceedings" state as follows:

"Sec. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof. - When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.

"Sec. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

In the case of *Quijano vs. Tameta*, L-16473, April 20, 1961, 1 SCRA 997, We said that:

"x x x The remedy allowed by said rule to a party adversely affected by the decision is merely an act of grace or benevolence intended to afford the litigant a penultimate opportunity to protect his interest. Considering the nature of such relief and the purpose behind it, the period fixed by said rule is non-extendible and is never interrupted; nor can it be subject to any condition or contingency because it is itself devised to meet a condition or contingency."

In the more recent case of *Turqueza vs. Hernando*, L-51626, April 30, 1980, 97 SCRA 483, the Supreme Court also held that:

"There is no justification in law and in fact for respondent judge's void act of ordering the reopening of the case which has long become final and which has in fact been executed. It is settled that once a decision becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend, much less revoke it. As the Court stated in the case of *Lee Bun Ting vs. Aligaen*, 'Reasons of public policy, judicial orderliness, economy and judicial time and the interests of litigants as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction.'

x x x

"The Court has said time and again that the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. The law gives an exception or 'last chance' of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38, supra, but such grace period must be taken as 'absolutely fixed, inextendible, never interrupted and cannot be subjected to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance' and failure to avail of such last chance within the grace period fixed by the statute or Rules of Court is fatal."

The rule, therefore, is that in order for a petition for relief filed under Rule 38 to be entertained by the court, the petitioner must satisfactorily show that he has faithfully and strictly complied with the provisions of Rule 38. Consequently, in assailing the lower court's dismissal of his petition for relief for having been filed out of time, it is incumbent upon herein petitioner to show that the said petition was filed within the reglementary period specified in Section 3, Rule 38. He has failed to do so, instead he argues on the merits of his petition for relief, without first showing that the same was filed on time in the court below. On this ground alone, the instant case should be dismissed.

Moreover, We agree with respondent trial court that the petition for relief was filed late. We note that the decision sought to be set aside was rendered on December 18, 1969, on the day itself that the parties submitted their compromise agreement. On the other hand, petitioner filed his petition for relief on May 16, 1972. This Court has held that a judgment approving a compromise agreement which contains nothing that would require subsequent court approval "right then and there writes finis to a controversy", and the period to file the petition for relief from said judgment commences to run from the date the decision was rendered. (*Dirige vs. Biranya*, L-22033, July 30, 1966, 17 SCRA 840, 850; *Bodiongan vs. Hon, Ceniza, etc., et al.*, 102 Phil. 750, 755-756). Clearly, the petition for relief in the case at bar was filed more than two (2) years after the decision sought to be set aside, therefore, beyond the period allowed by Section 3, Rule 38. As in previous cases, this Court holds and so rules that the instant petition filed after the lapse of the reglementary period cannot be entertained. (See *Villeza vs. Almedo*, 1 SCRA 761, 762; *Quijano vs. Tameta*, 1 SCRA 997, 998; *Prospero vs. Robles, et al.*, 8 SCRA 189, 192; *J.M. Tuason & Co., Inc. Aguila*, 9 SCRA 537, 539; *Dirige vs. Biranya, supra*, p. 851; *Daran vs. Angco*, 20 SCRA 1127, 1129; *Radiowealth Trading Corporation vs. Abastillas*, 33 SCRA 93, 98; *Turqueza vs. Hernando*, 97 SCRA 483, 489).

Nor did petitioner comply with the requirement of Rule 38 to support his petition for relief with an affidavit of merit showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting his good and meritorious defense. Such noncompliance has been declared by this Court as a ground for denial of a petition for relief. (*Quijano vs. Tameta, supra*; *J.M. Tuason & Co., etc. vs. Baloy*, 8 SCRA 72, 73; *Prospero vs. Robles, et al., supra*; *J.M. Tuason & Co., Inc. vs. De la Rosa*, 18 SCRA 591, 594-595).

Arguing on the merits of his petition for relief, petitioner's main contention is that the court a quo did not acquire jurisdiction over the nature or subject matter of Civil Case No. SM-243 and therefore, its decision dated December 18, 1969, as well as the writ of execution dated April 15, 1972 and the order of demolition dated July 5, 1972 issued to implement said decision, were all null and void. According to petitioner, the case involves an agrarian dispute and an established tenancy relationship between the parties, hence, it should fall squarely within the original and exclusive jurisdiction of the Court of Agrarian Relations (CAR).

The contention is without merit. It cannot be controverted that the allegations of the Complaint filed by herein private respondents in the court below (Civil Case No. SM-243) constitute a cause of action for ejectment and damages against petitioner. Private respondents, as complainants therein, claimed ownership over the parcel of

land in question identified as Lot No. 2604-B but which was allegedly in the possession of petitioner who had been unlawfully depriving them of their right to possess the property for several years. In other words, they filed an accion publiciana, a plenary action for the recovery of possession of real property, properly cognizable by the court of first instance. See *Firmeza vs. David*, 92 Phil. 733, 735; *J.M. Tuason & Co., Inc. vs. Villanueva*, 104 Phil. 643, 648; *Cunanan vs. CA and Basaran*, 25 SCRA 263, 268). The Court does not lose nor is it deprived of its jurisdiction by a de-fense of tenancy but has the authority to hear the evidence for the purpose of determining whether or not it has jurisdiction (*Evangelista vs. CAR Iloilo, et al.*, 109 Phil. 957).

Thus, in the case at bar, petitioner's defense of tenancy in his Answer to private respondents' complaint did not automatically divest the lower court, a court of first instance, of its jurisdiction over Civil Case No. SM-243. It merely gave the court authority to receive evidence to determine the tenability of the claim of tenancy. A hearing on the issue of tenancy, however, became unnecessary in view of their Compromise Agreement dated December 18, 1969, up to which time the lower court still had jurisdiction over the case. And finding nothing contrary to law, public morals or public policy in said agreement, the court correctly approved the same and rendered judgment on the basis thereof. A judgment rendered upon a compromise "is in the nature of a contract and is in effect an admission by the parties that the judgment is a just determination of their rights on the facts of the case, had they been proved," and it has upon the parties "the effect and authority of res judicata." (*Serrano vs. Miave, et al.*, L-14678, March 31, 1965, 13 SCRA 461, 466. See also *Araneta vs. Perez*, 7 SCRA 923, 924; *Ramos vs. Pangasinan Transportation Co., Inc. and Ferrer*, 79 SCRA 170, 174- 175).

For the reasons stated above, the Order of the lower court dated July 3, 1972 denying herein petitioner's Petition for Relief as well as the Order dated July 5, 1972 directing the issuance of a writ of demolition, should be, as they are, hereby affirmed. In view hereof, petitioner's Motion dated March 17, 1973 to declare private respondents and their counsel in contempt of court need not be passed upon.

WHEREFORE, the instant special civil action is hereby DISMISSED. Costs against petitioner.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

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