

CARMELITA DELA CRUZ, PETITIONER, VS. HON. GLORIA BUTAY AGLUGUB, AS THE PRESIDING JUDGE OF REGIONAL TRIAL COURT, LAS PIÑAS CITY, BRANCH 254, THE REGISTER OF DEEDS OF LAS PIÑAS CI...

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

This is a Petition for Certiorari (With Prayer for Preliminary Injunction and Temporary Restraining Order)[1] under Rule 65 of the Rules of Court,[2] assailing on the ground of grave abuse of discretion, the Order[3] dated 21 September 2012 and Order[4] dated 10 January 2013, both issued by Presiding Judge Gloria Butay Aglugub[5] of Branch 254, Regional Trial Court of Las Piñas City,[6] in Civil Case No. LP-98-0145, entitled "Carmelita Dela Cruz, Plaintiff, versus Spouses Efren L. Del Rosario and Luzviminda Del Rosario and the Register of Deeds of Las Piñas City."

The aforesaid case before the RTC is one for annulment of sale, cancellation and reconveyance of title with damages, filed by petitioner Carmelita dela Cruz[7] against Spouses Efren and Luzviminda Del Rosario[8] and the Register of Deeds[9] of Las Piñas. After trial, the RTC issued a Decision[10] dated 03 August 2009 dismissing the case, the dispositive portion of which reads –

"X x x

WHEREFORE, premised on the foregoing, herein complaint for annulment of the deed of sale and cancellation of TCT No. T-62507 covering the lot located at 405 Real St., Talon, Las Piñas City issued in the name of herein defendants-spouses, Efren and Luzviminda del Rosario, is hereby DENIED for lack of merit and accordingly, the same complaint is DISMISSED.

However, considering that defendants-spouses still owed plaintiff the amount of Php 122,385.00, they are hereby ORDERED to pay plaintiff, said amount of (Php 122,385.00) with legal interest computed from the date of the demand therefor until fully paid.

Additional filing fee therefor shall constitute a lien on the judgment and in respect of which, the Clerk of Court, RTC, is hereby DIRECTED to enforce said lien and assess and collect the same.

Costs against the defendants-spouses.

SO ORDERED.

X x x"[11]

Petitioner sought a reconsideration[12] but was denied,[13] thus an appeal was made to this Court.[14]

While the appeal was pending before the Special 14[th] Division of this Court, private respondent filed a Motion to Allow Defendant-Appellee to File a Verified Application for Appointment of a Receiver Before the Trial Court,[15] which was acted upon favorably by this Court[16] and the subsequent reconsideration thereof

denied.[17] Thereafter, private respondent filed the subject Motion for Appointment of a Receiver[18] before the RTC.

The twin issuances of the respondent Judge, sought to be annulled in this Petition, refer to the act of setting for hearing private respondent's application for the appointment of a receiver. Initially, respondent Judge denied the application on technicality, but upon reconsideration, the court made the following ruling, thus –

"X x x

In his Motion for Reconsideration filed thru counsel on July 26, 2012 defendant Efren del Rosario, seeks reconsideration of the Order dated June 5, 2012, denying his Motion to Allow Appointment of a Receiver.

In his motion, defendant alleged that the motion was verified by movant Efren del Rosario and that it should be given due course.

The Court finds the motion to be meritorious. The Order dated June 5, 2012 is hereby reconsidered and set aside.

The Motion being sufficient in form and substance, let the same be set for hearing on November 21, 2012, at 8:30 in the morning.

SO ORDERED.

X x x"[19] [Emphasis supplied]

and after a Motion to Set Aside Order dated 21 September 2012[20] was filed by the petitioner, the RTC likewise ruled –

"X x x

Moreover, the Motion to Set Aside Order dated September 21, 2012 are mere repetitions of matters already raised and fully considered by the court and no substantial arguments (sic) was presented to warrant its reversal.

In view thereof, the Motion to Set Aside Order dated September 21, 2012 is hereby DENIED.

The hearing of the motion to allow appointment of a receiver shall proceed as scheduled on March 6, 2013, at 8:30 in the morning.

SO ORDERED.

X x x"[21] [Emphasis supplied]

It comes as a surprise that petitioner immediately sought relief from this Court, jumping the gun so to speak, not waiting for the RTC to exercise its judicial discretion on the appointment of a receiver –

"X x x

4.10 Petitioner respectfully submits that the grounds relied upon by Private respondent are not applicable to the present case so as to entitle him to the appointment of a receiver due to the reasons specifically discussed below.

X x x"[22]

with petitioner raising the following issues herein:

A.

PUBLIC RESPONDENT HONORABLE AGLUGUB GRAVELY ABUSED HER DISCRETION AND ACTED IN EXCESS OF JURISDICTION WHEN SHE ISSUED THE ORDERS DATED 21 SEPTEMBER 2012 AND 10 JANUARY 2013, WHICH ESSENTIALLY GRANTS THE APPOINTMENT OF A RECEIVER TO RECEIVE THE RENTAL PAYMENTS IN THIS CASE, DESPITE THE FACT THAT THE RENTS ARE NOT COVERED BY THE COMPLAINT SO AS TO BE CONSIDERED AS THE PROPERTY OR FUND IN LITIGATION.[23]

B.

PUBLIC RESPONDENT HONORABLE AGLUGUB GRAVELY ABUSED HER DISCRETION AND ACTED IN EXCESS OF JURISDICTION WHEN SHE ISSUED THE ORDERS DATED 21 SEPTEMBER 2012 AND 10 JANUARY 2013, WHICH ESSENTIALLY GRANTS THE APPOINTMENT OF A RECEIVER TO PRESERVE THE IMPROVEMENTS AND RECEIVE THE RENTAL PAYMENTS IN THIS CASE, DESPITE THE FAILURE OF PRIVATE RESPONDENT TO ADVANCE ANY GROUND TO SUPPORT THE APPOINTMENT PURSUANT TO RULE 59, SECTION 1 OF THE RULES OF COURT.[24]

According to petitioner, the income or rents from the property subject of the Complaint below cannot be included in the concept of the property or land in litigation to be reserved or protected by a receiver, citing the case of Calo, et al. vs. Roldan, et al.[25] in support thereof, to wit:

"X x x

A receiver may be appointed to take charge of personal or real property which is the subject of an ordinary civil action, when it appears that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or litigation, and that such property or fund is in danger of being lost, removed or materially injured unless a receiver is appointed to guard and preserve it (section 1 [b], Rule 61); or when it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the property in litigation (section 1 [e] of said Rule). The property or fund must, therefore be in litigation according to the allegations of the complaint, and the object of appointing a receiver is to secure and preserve the property or thing in controversy pending the litigation. Of course, if it is not in litigation and is in actual possession of the plaintiff, the latter can not apply for and obtain the appointment of a receiver thereof, for there would be no reason for such appointment.

X x x"

Petitioner seems to be confused. RTC merely set the issue on the appointment of a receiver for hearing. No receiver has yet been appointed by the court.

Now, on his Comments to the Petition,[26] private respondent claims that petitioner has raised new arguments in her Petition for the first time before this Court, in particular, on the claim that the rent on the subject property is not covered by and not part of the litigation in the case before the court of origin. Further, private respondent insists that the Petition is premature, as the hearing on the motion for appointment of a receiver is still pending before the RTC.

Realizing the procedural faux pas, petitioner subsequently filed a Motion to Withdraw Petition,[27] in effect admitting that the issue on the appointment of a receiver is still pending, thus –

"X x x

5. Considering the fact that Petitioner still has the remedy to raise the foregoing arguments before the Honorable Judge Gloria Butay Aglugub of RTC – Las Piñas City, Br. 254, Petitioner respectfully prays for the withdrawal of her Petition in the meantime.

X x x"[28] [Emphasis supplied]

However, inasmuch as private respondent has already filed his comment, this Court denied the withdrawal of the Petition and submitted the case for decision.[29]

The Petition should be dismissed.

The issue on the propriety of the appointment of a receiver is still pending before the court below. Petitioner has obviously admitted her error in asking for the withdrawal of the instant Petition.

Section 1, Rule 65 of the Rules provides –

"X x x

Section 1. Petition for certiorari. When any 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, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

X x x"

The RTC has not acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in merely setting for hearing the motion for appointment of a receiver. Petitioner's application for a writ is clearly unwarranted. The issuance of an order setting the motion for hearing, before ruling on a motion, to hear the arguments of both parties is by no stretch of imagination be deemed as an abuse of discretion, much less a grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The respondent Judge acted in accordance with law and established jurisprudence in so doing.

Likewise, as admitted by petitioner herself, she still has the remedy to raise her arguments before the RTC.[30] The character of the writ of certiorari as expressed in the law clearly provides that it is proper only if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. And this rule has been consistently applied except where appeal is satisfactorily shown to be an insufficient recourse under the circumstances.

WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED. The assailed Orders dated 21 September 2012 and 10 January 2013 issued by Branch 254, Regional Trial Court of Las Piñas City stand.

SO ORDERED.

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

[1] Rollo, 03 to 28.

[2] "Rules," for brevity.

[3] Rollo, page 29, Annex "A," Petition.

[4] Id. at 30 and 31, Annex "B," Petition.

[5] "Respondent Judge," for brevity.

- [6] "RTC," for brevity.
- [7] "Petitioner," for brevity.
- [8] "Private respondents," for brevity.
- [9] "RD," for brevity.
- [10] Rollo, pages 148 to 161.
- [11] Rollo, pages 160 to 161.
- [12] Id. at 162 to 178.
- [13] Id. at 179 to 180.
- [14] Id. at 181 to 183.
- [15] Id. at 187 to 193.
- [16] Id. at 207 to 208.
- [17] Id. at 226.
- [18] Id. at 209 to 216, "Motion," for brevity.
- [19] Id. at 29.
- [20] Id. at 230 to 232.
- [21] Id. at 31.
- [22] Id. at 18.
- [23] Id. at 14.
- [24] Id. at 13 to 14 and 17.
- [25] G.R. No. L-252, 30 March 1946.
- [26] Rollo, pages 275 to 278.
- [27] Id. at 286 to 290.
- [28] Id. at 287.
- [29] Id. at 296 to 297.
- [30] Id. at 287.

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