

JOHN SY A.K.A. JOHN KENG SENG, PETITIONER, VS. JUDGE ESTEFANIO S. LIBUTAN, JR., PRESIDING JUDGE OF BRANCH 50, RTC, BACOLOD CITY, AND YOLANDA LEE, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Order[2] dated June 22, 2010 of the Regional Trial Court of Negros Occidental, Sixth (6th) Judicial Region, Branch 54, Bacolod City, in Civil Case No. 08-13314, as well as the Orders[3] dated October 18, 2011 and September 6, 2012 of the Regional Trial Court of Negros Occidental, Sixth (6th) Judicial Region, Branch 54, Bacolod City in the same Civil Case No. 08-13314 for Replevin and Damages.

The Antecedents

In gist, petitioner John Sy a.k.a John Keng Seng filed a Complaint[4] for Replevin and Damages against the private respondent Yolanda Lee with the Municipal Trial Court in Cities denominated as Civil Case No. 23911.

Petitioner alleged that he is the owner and rightful possessor of a Toyota Land Cruiser with Serial/Chasis No. FJ40-91745 and with Plate No. UV-FCM-178. Due to his frequent travels in the United States, he left the care of his businesses and properties to Emilio Young.

During a physical inventory of his properties, he learned that the said Toyota Land Cruiser was already registered under the name of private respondent Yolanda Lee. Hence, he immediately initiated an action to retrieve the said personal property.

In a Decision[5] dated October 30, 2008, the Municipal Trial Court in Cities, Branch 3 of Bacolod City ruled in favor of the petitioner. However, he was directed to reimburse the private respondent for the improvements made on the vehicle in the total amount of P49,000.00. Furthermore, petitioner was also ordered to pay for damages. The dispositive portion of the decision reads:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered, upholding ownership of Toyota Land Cruiser with Motor No. 0032587, Body Type No. FJ40-71-1994 and Chassis No. FJ40-91745 in favor of the plaintiff John Sy whose possession thereof is already in his person.

Plaintiff is, however, directed to reimburse defendant Yolanda Lee for her expenses for the improvement on the aforesaid motor vehicle in the amount of P49,000.00.

Furthermore, in view of the horrific ordeal that defendant Yolanda had to undergo, she is entitled to her claim for damages in the amount of P20,000.00 as actual damages, another P20,000.00 as moral damages, and P20,000.00 as exemplary damages.

The case against defendant Benito Young is hereby ordered dismissed in view of his passing away."[6]

Unsatisfied, petitioner filed an appeal[7] to the Regional Trial Court of Negros Occidental. In an Order[8] dated

June 22, 2010, the Regional Trial Court of Negros Occidental, Branch 54, Bacolod City affirmed the decision of the MTCC but deleted the award for exemplary damages. The decretal portion of the assailed order states:

"WHEREFORE, the DECISION on appeal is hereby AFFIRMED but delete the grant of exemplary damages to the defendant.

SO ORDERED."[9]

Still unsatisfied with the ruling, petitioner then filed a Motion for Reconsideration[10] dated July 7, 2010.

In an Order[11] dated May 13, 2011, Judge Demothenes L. Magallanes of RTC Negros Occidental, Branch 54, Bacolod City inhibited from treating the motion for reconsideration. This is in response to the private respondent Yolanda Lee and the latter's sisters' call for him to inhibit on conflicts involving the Sy siblings.

Subsequently, in an Order[12] dated October 18, 2011, the Regional Trial Court of Negros Occidental, Branch 50 of Bacolod City, the newly designated court, resolved to deny the motion for reconsideration interposed by the petitioner.

Petitioner then filed a Notice of Appeal[13] dated August 29, 2012. However, such notice was dismissed by the RTC, Branch 50 in an Order[14] dated September 6, 2012. The court ratiocinated that an ordinary appeal under Rule 41 Sec. 2(a) of the Rules of Court is not the proper remedy as the assailed Order was issued by the court in the exercise of its appellate jurisdiction.

Undeterred and aggrieved, petitioner come before Us raising the following issues:

1. WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO AN EXCESS OF JURISDICTION IN ISSUING AN ORDER INSTEAD OF A DECISION ON APPEAL.
2. WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN HOLDING THAT THE PETITIONER IS LIABLE TO PAY THE PRIVATE RESPONDENT DAMAGES? [SIC]

The Ruling of this Court

The petition is not meritorious.

At the outset, a petition for certiorari cannot be a substitute for an appeal from a lower court decision. Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. The remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefore is grave abuse of discretion.[15]

Noteworthy also is Section 2, Rule 41 of the (Rules of Court) which governs appeals from judgments and final orders of the RTC to the Court of Appeals, (which) provides:

SEC. 2. Modes of appeal. –

- (a) Ordinary appeal. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or

these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari. – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.[16]

In *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*,^[17] (the Supreme Court) summarized the rule on appeals as follows:

(1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on certiorari under Rule 45.

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42. (emphasis supplied)

In the case at bench, the petitioner is assailing the order of the Regional Trial Court which was made in the exercise of its appellate jurisdiction. Clearly, applying the afore-cited rules and tenets, the petitioner should have filed a Petition for Review under Rule 42 of the Rules of Court instead of a Petition for Certiorari under Rule 65, as the latter only concerns grave abuse of discretion on the part of the lower court and not errors in its judgment.

At this juncture, it is beyond cavil that the remedy of appeal was available to the petitioner. In fact, records and facts would reveal that after receiving the ruling of the RTC, petitioner filed a Notice of Appeal before the said court, which the RTC struck down as it was not the appropriate mode of appeal given the circumstance of the case. To remedy such a fatal lapse, petitioner averred that he was not assisted by counsel at that time. He also explained that he only inquired from the court's personnel the next procedure to be undertaken.

We are hardly moved.

It bears stressing that during the appeal stage at the RTC, petitioner continued to litigate his case by himself, despite the withdrawal^[18] of his counsel at the MTCC level. By doing so, petitioner is considered a party exercising his right to represent himself and therefore, is not excluded from complying with the rules.

In *Cruz v. Judge Mijares*,^[19] it has been held that:

The Rules state that a party may conduct his litigation personally or with the aid of an attorney, and that his appearance must either be personal or by a duly authorized member of the Bar. The individual litigant may personally do everything in the course of proceedings from commencement to the termination of the litigation.^[20] Considering that a party personally conducting his litigation is restricted to the same rules of evidence and procedure as those qualified to practice law,^[21] petitioner, not being a lawyer himself, runs the risk of falling into the snares and hazards of his own ignorance. Therefore, Cruz as plaintiff, at his own instance, can personally conduct the litigation of Civil Case No. 01-0410. He would then be acting not as a counsel or lawyer, but as a party exercising his right to represent himself. (emphasis supplied)

Accordingly, the erroneous choice of remedy binds the petitioner and he cannot therefore invoke the same to justify his resort to a Petition for Certiorari under Rule 65, when in the first place the remedy of appeal was present.

Moreover, even if We consider this Petition for Certiorari under Rule 65 of the Rules of Court, the petition will still fail. This is because (a) special civil action of certiorari is an independent action, raising the question of jurisdiction where the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[22] The ultimate purpose of such action is to keep an inferior tribunal within the bounds of its jurisdiction or relieve parties from arbitrary acts of courts.[23]

Grave abuse of discretion, under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[24]

In addition, (a) petition for certiorari was never meant as a mode of reviewing errors of judgment committed by an inferior tribunal.[25] Evidently, in the present case, what the petitioner is assailing involves a question of judgment and not of jurisdiction. Hence, certiorari is unavailing. Indeed, "Where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for certiorari." [26]

Furthermore, (a)s certiorari is not a substitute for lost appeal, time and again, (the Supreme Court) have emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Neither can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.[27]

All told, it is without a doubt that the Order[28] dated September 6, 2012 of the RTC which dismissed the Notice of Appeal[29] filed by the petitioner under Rule 41 of the Rules of Court for being an improper mode of appeal, has long been final and executory. Corollary thereto, this Court has no more jurisdiction to act upon matters that had already attained finality.

Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[30] (emphasis supplied)

Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest.[31]

WHEREFORE, in view of the foregoing, the petitioner's Petition for Certiorari under Rule 65 of the Rules of Court is hereby DISMISSED for being the wrong mode of appeal.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] See Petition, rollo, pp. 6-87.

[2] Rollo, pp. 24-25.

[3] Rollo, p. 26; p. 27.

[4] Rollo, pp. 43-48.

[5] Rollo, pp. 49-56.

[6] Rollo, p. 56.

[7] Rollo, p. 61.

[8] Rollo, pp. 24-25.

[9] Rollo, p. 25.

[10] Rollo, pp. 28-29.

[11] Rollo, p. 33.

[12] Rollo, p. 26.

[13] Rollo, pp. 39-40.

[14] Rollo, pp. 27.

[15] David v. Cordova, G.R. No. 152992, July 28, 2005 citing Madrigal Transport, Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, 11 August 2004, 436 SCRA 123, 136-137.

[16] Sevileno v. Carilo, G.R. No. 146454, September 14, 2007.

[17] See Sevileno v. Carilo, G.R. No. 146454, September 14, 2007, citing Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals, G.R. No. 115104, October 12, 1998, 297 SCRA 602.

[18] See Order dated September 18, 2008, rollo, p. 60.

[19] G.R. No. 154464, September 11, 2008.

[20] Cruz v. Judge Mijares, G.R. No. 154464, September 11, 2008, citing Santos v. Lacurom, A.M. No. RTJ-04-1823, August 28, 2006, 499 SCRA 639, 648-649.

[21] Cruz v. Judge Mijares, G.R. No. 154464, September 11, 2008, citing Maderada v. Mediodea, 459 Phil. 701, 716-717 (2003).

[22] Espinoza v. Provincial Adjudicator of the Provincial Agrarian Reform Adjudication Office of Pampanga, G.R. No. 147525, February 26, 2007, citing Romero v. Tan, G.R. No. 147570, 27 February 2004, 424 SCRA 108.

[23] Espinoza v. Provincial Adjudicator of the Provincial Agrarian Reform Adjudication Office of Pampanga,

G.R. No. 147525, February 26, 2007, citing II Justice Jose Y. Feria and Maria Concepcion S. Noche, Civil Procedure Annotated, 456-457 (2001).

[24] Beluso v. COMELEC, G.R. No. 180711, June 22, 2010.

[25] Espinoza v. Provincial Adjudicator of the Provincial Agrarian Reform Adjudication Office of Pampanga, G.R. No. 147525, February 26, 2007.

[26] Espinoza v. Provincial Adjudicator of the Provincial Agrarian Reform Adjudication Office of Pampanga, G.R. No. 147525, February 26, 2007, citing People v. Court of Appeals, G.R. No. 142051, 24 February 2004, 423 SCRA 605.

[27] David v. Cordova, G.R. No. 152992 July 28, 2005, citing Delgado v. Court of Appeals, G.R. No. 137881, 21 December 2004, 447 SCRA 402, 413.

[28] Rollo, p. 27.

[29] Rollo, pp. 39-40.

[30] Serrano v. Ambassador Hotel, Inc., G.R. No. 197003, February 11, 2013, citing Gallardo-Corro v. Gallardo G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578.

[31] Heirs of Emiliano San Pedro v. Garcia, G.R. No. 166988, July 3, 2009.

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