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AIDA R. DIMAGIBA, PETITIONER, VS. HON. OLIVIA V. ESCUBIO-SAMAR, PRESIDING JUDGE, RTC, BRANCH 79, MALOLOS CITY AND MARILYN U. VILAL, ATTORNEY-IN-FACT OF FELY HABON, RESPONDENTS.

SP No. 94934, March 31, 2008

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Court of Appeals

Petition for Certiorari under Rule 65 of the Rules of Civil Procedure assailing, on the ground of grave abuse of discretion amounting to lack of jurisdiction, the Order[1] dated November 7, 2005 of the Regional Trial Court of Malolos, Bulacan (Branch 79) in Civil Case No. 515-M-2004 entitled "Manilyn U. Vilal, in her capacity as Attorney-in-Fact of Fely V. Habon versus Benjamin Dimagiba and all persons claiming rights under him", The dispositive portion of the assailed Order reads:

> "IN VIEW OF THE FOREGOING, the Motion to Dismiss is hereby DENIED for lack of merit."[2]

Also assailed is the Order[3] dated April 7, 2006 denying petitioner's Motion for Reconsideration.

The facts:

Petitioner's father Benjamin Dimagiba had been in peaceful possession of parcels of agricultural land with areas of 27,585 and 1,014 square meters identified as Lots 30 and 50 respectively, situated in Buenavista Estate, Barangay Ulingao, San Rafael, Bulacan, as tiller-cultivator for more than 50 years.[4]

Petitioner claimed that during the period when the subject lots were cultivated by her father, a certain Miguela Baltazar filed an application with the government for the ownership of the lots. However, Miguela failed to meet the prescribed requirements. When Miguela died, her niece Josefina Baltazar claimed the subject lots and sold the same to spouses Isabel de Leon and Pablo Cristobal. Benjamin filed a complaint with the Ministry of Agrarian Reform docketed as MAR (LA) No. 964 protesting the transfer of rights over the subject lots to Pablo Cristobal without giving him the opportunity to exercise his right of preemption the property.[5] When the dispute was finally resolved by the Ministry of Agrarian Reform (no Department of Agrarian Reform) in its Order[6] dated December 6, 1983, Benjamin filed an Application to Purchase the lots on March 1, 1994[7]. However, during the pendency of his application, Benjamin died and was succeeded by herein petitioner. On October 25, 2004, TCT No. CLOA-T-14920 and TCT No. CLOA-T-14921 were issued in the name of herein petitioner as Benjamin's successor-in-interest.[8]

In the meantime, the sale by Josefina Baltazar to spouses Isabel de Leon and Pablo Cristobal resulted in the issuance of TCT Nos. 305938 and 305939 covering the same lots in the name of spouses Isabel de Leon and Pablo Cristobal.[9]

On August 10, 2004, respondent Manilyn U. Vilal, attorney-in-fact of Fely Habon, filed a Complaint for Quieting of Title and Recovery of Possession with Prayer for Preliminary Injunction against the petitioner.[10] Respondent Vilal alleged that Fely Habon is the registered owner of the subject parcels of land covered by TCT No. T-81475

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and TCT No. T-81476 with areas of 27,565 and 1,014 square meters respectively;[11] that the said properties were purchased by Fely Habob from Spouses Isabel de Leon and Pablo Cristobal as evidenced by two (2) Deeds of absolute Sale both dated December 14, 1995;[12] that since then Fely Habon had been occupying, cultivating and introducing improvements thereon;[13] and, that sometime in June 2004, Fely Habon's caretaker was forcefully ejected by the petitioner allegedly armed with a Writ of execution dated September 20, 2001 issued by the DARAB (Region III), Office of the Provincial Agrarian Reform Adjudication Board (Branch II), in DARAB Case No. 6160 entitled "Benjamin Dimagiba v. Manuel Chua".[14]

On October 29, 2004, petitioner moved to dismiss the complaint on the ground that the court does not have jurisdiction to try the case since the dispute involves the implementation of Republic Act No. 6657 otherwise known as the Comprehensive Agrarian Reform Law exclusively cognizable by the DAR.[15]

On November 7, 2005, the RTC issued the assailed Order[16] denying petitioner's motion to dismiss for lack of merit, ratiocinating that:

> In the case at bar, the element that the parties must be the landowner and the tenant or agricultural lessee', on which all other requisites of the tenancy agreement depends, is absent. Clearly, no agrarian dispute is involved in this case. Tenancy Relationship is inconsistent with the assertion of ownership of both parties.
>
> From the averments of the complaint in the instant case, it is clear that the petitioner's action does not involve an agrarian dispute, but one for quieting of title and recovery of possession which is perfectly within the jurisdiction of the regional trial courts. At the core of this controversy is the issue of ownership of the subject parcels of land."[17] (emphasis supplied)

Petitioner's Motion for Reconsideration[18] dated November 30, 2005 was denied in the other assailed Order[19] dated April 7, 2006.

Hence, this Petition for Certiorari on the following grounds:

> "I.
> THAT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN SHE ISSUED THE ORDER DATED 7 NOVEMBER 2005 DENYING PETITIONER'S MOTION TO DISMISS CIVIL CASE NO. 515-M-2004 FOR WANT OF JURISDICTION TO HEAR AND TRY THE CASE;
>
> II.
> THAT THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN SHE ISSUED THE ORDER DATED 7 APRIL 2006 DENYING PETITIONER'S MOTION FOR RECONSIDERATION;
>
> III.
> THAT THE ASSAILED ORDERS ARE CONTRARY TO LAW AND EVIDENCE"[20]

The petition has no merit.

Petitioner basically contends that the trial court acted without or in excess of jurisdiction or with grave abuse of discretion when it denied petitioner's motion to dismiss the complaint in Civil Case No. 515-M-2004.

The general rule regarding denial of a motion to dismiss as a basis of a resort to the extraordinary writ of certiorari is that an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits.[21] The proper remedy in such a case is to appeal after a decision has been rendered. Certiorari is resorted to only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction.[22]

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To justify the grant of the extraordinary remedy of certiorari, therefore, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. However, even assuming that certiorari is the proper remedy, We find no grave abuse of discretion committed by the trial court in denying petitioner's motion to dismiss. We have carefully examined the records of the case and the pleadings filed and the challenged Orders of public respondent, and We are convinced that the latter cannot be faulted with grave abuse of discretion. By "grave abuse of discretion" is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[23] There is no such showing on the part of the public respondent. On the contrary, it is obvious to Us that public respondent court acted judiciously and with clear observance of due process.

Thus We hold that the petition for certiorari filed by the petitioner is not the proper remedy to assail the denial by the trial court of the motion to dismiss. As held in the case of Indiana Aerospace University vs. Commission on Higher Education:[24]

> "An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of certiorari is not intended to correct every controversial interlocutory ruling: It is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts - acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts."

It is a well settled rule that after the trial court denies a motion to dismiss the complaint, the defendant should file an answer, proceed to trial and await judgment. Should the decision of the lower court be adverse to him, his remedy is to appeal.[25]

Moreover, petitioner filed her Motion to Dismiss after she had filed an Answer to the Complaint contrary to Section 1, Rule 16 of the 1997 Rules of Civil Procedure which provides that the motion to dismiss must be made 'within the time for but before filing the answer to the complaint or pleading asserting a claim'. A motion to dismiss may not be made after an answer had already been filed.[26]

Anent the issue of jurisdiction, petitioner asserts that the trial court had no jurisdiction over the case considering that it involved an agrarian dispute. However, in order to consider a case an agrarian dispute, the following essential requisites of an agricultural tenancy relationship must be present: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvest or payment of rental.[27] These elements are absent in the instant case.

There is no tenancy relationship between the parties.[28] Both parties claim to be the lawful owner of the subject parcels of land over which the controversy centers, they having conflicting claims of ownership by virtue of a Certificate of Land Ownership Award in the name of petitioner on the one hand, and on the other hand, two (2) documents entitled Deed of Absolute Sale with Fely Habon as the vendee who thus appears as registered owner thereof under TCT No. T-81475 and TCT No. T-81476. This being so, the trial court properly assumed jurisdiction.

WHEREFORE, for lack of merit, the instant petition is hereby dismissed.

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SO ORDERED.

Carandang and Perlas-Bernabe, JJ., concur.

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[1] Annex "A", Rollo, pp. 14-15.

[2] Rollo, p. 15.

[3] Annex "B", Rollo, p. 16

[4] Decision, DARAB Case No. 6160 dated February 7, 2001

[5] Rollo, pp. 2-4

[6] Annex "E", Rollo, pp. 92-94

[7] Annex "G", Rollo, pp. 46-48

[8] Rollo, pp. 1-4

[9] Rollo, pp. 51-53

[10] Rollo, p. 4

[11] Rollo, p. 129

[12] Rollo, p. 130

[13] Id.

[14] Id.

[15] Annex "C, Rollo pp. 17-21 18 Annex "A", Rollo, pp. 14-15

[17] Rollo, p. 15

[18] Annex "D", Rollo, pp. 35-41

[19] Annex "B", Rollo, p. 16

[20] Rollo, p. 5

[21] Bonifacio Construction Management Corp. v. Hon. Perlas-Bernabe, 462 SCRA 392

[22] Indiana Aerospace University v. Commission on Higher Education, 356 SCRA 167

[23] Rimbunan Hijau Group of Companies v. oriental Wood Processing Corp., 470 SCRA 650 cited in Balo v. Court of Appeals, 471 SCRA 227

[24] 356 SCRA 367

[25] Bonifacio Construction Management Corp. v. Hon. Perlas-Bernabe, supra

[26] Lagutan v. Icao, 224 SCRA 9

[27] Gutierrez v. Cabrera, 425 SCRA 521

[28] Guiang v. Court of Appeals, G.R. No. 169372, December 6, 2006

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