

**DOMINGO GELINDON, VIOLETA HERRERA, LEON RODRIGUEZ,
CORAZON DIONISIO, RONNIE JASPE, MAGDALENA BAGRO, ET AL.,
PETITIONERS, VS. HONORABLE JOSE DE LA RAMA AS PRESIDING
JUDGE OF RTC,...**

G.R. No. 105072. December 09, 1993

Ponente: VITUG, J.

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VITUG, J.:

Forty-eight (48) petitioners filed this special civil action for certiorari, with prayer for restraining order, injunction and damages, "on both questions of law and facts," seeking to annul the decision,[1] dated 5 February 1992, of the Metropolitan Trial Court of Parañaque, Branch 78, ordering, among other things, herein petitioners to vacate the subject premises and to surrender peacefully the possession thereof to the private respondent.

This controversy began when, on 10 July 1989, herein private respondent Real Estate Investors, Inc. ("Investors"), filed a complaint,[2] docketed as Summary Proceeding No. 7719, for forcible entry against the petitioners before Branch 78 of the Metropolitan Trial Court ("MTC") of Parañaque, Metro Manila.

The petitioners filed their consolidated answer to the complaint except for petitioner Violeta Herrera, who filed her own answer and moved for the dismissal of the case against her on the ground that she had legal grounds to stay in the premises.

After the preliminary conference, the parties were requested to submit their respective position papers within 10 days from receipt of the court's order. The petitioners and the private respondent submitted their position papers,[3] respectively, on 19 October 1989 and 6 November 1989.

The petitioners moved to "set aside" the respondent's position paper for having been filed out of time. On 19 July 1990, the MTC issued its order, stating that the issue of the late filing of the private respondent's position paper had become academic in view of the so varied defenses raised by the numerous petitioners that thereby warranted the case to be covered by the regular, instead of the summary, procedure.

On 16 August 1990, respondent Investors filed a motion for leave of court to amend the complaint to include lot 1-E, a parcel of land being occupied by one of the petitioners, Violeta Herrera, and prayed that its amended complaint be admitted. The motion was granted by the court in its order[4] of 17 August 1990. On 15 July 1991, after a hearing, the MTC issued an order,[5] denying the petitioners' motion for reconsideration; viz:

"WHEREFORE, x x x; that since this case is covered by the Rule on Summary Procedure as manifested by the defendants thru counsel in the motion for reconsideration, let a copy of the Amended Complaint be furnished the defendants and for them to file their answer within ten (10) days from receipt thereof."

A motion to dismiss, filed by the petitioners, was denied by the MTC in an order of 4 September 1991.

For failure of the petitioners to file their answer to the amended complaint within the reglementary period,

respondent Investors filed an "Ex-Parte Motion to Render Judgment." In an order, dated 25 November 1991, the MTC deemed the case submitted for decision pursuant to the rules on summary procedure.

On 29 January 1992, a petition for certiorari was filed by the petitioners with the Regional Trial Court ("RTC") of Makati, Branch 139, to enjoin the MTC from rendering a decision on the case and to annul the several orders of the same court. The petition was dismissed by the RTC in its order[6] of 3 February 1992.

Finally, on 5 February 1992, the MTC rendered its questioned decision[7], thus -

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter and all persons claiming rights under them:

- a. To immediately vacate the subject premises and surrender peacefully the possession thereof to the plaintiff;
- b. To pay the plaintiff the sum of P1,000.00 monthly (each defendant) for the use and occupancy of the subject premises starting 10 July 1989 which is the date of the filing of the complaint and up to the time that the subject premises are actually vacated;
- c. To pay the plaintiff the sum of P20,000.00 jointly and severally as and for attorney's fees; and
- d. To pay the costs of suit."

Upon the receipt of the above decision, the petitioners filed a notice of appeal[8], dated 3 March 1992, before the MTC, contending that the questioned decision was biased, oppressive and not in accordance with the procedure and the evidence presented.

On 23 April 1992, respondent Investors filed a motion for execution pending appeal[9] which was opposed by the petitioners.

On 7 May 1992, the instant petition for certiorari was filed by the petitioners, claiming that there was no other plain, speedy and adequate remedy in the ordinary course of law to stop the MTC judge from issuing a writ of execution save this petition.

The petitioners have raised the following issues:

- "1. Whether a case being tried under summary procedure and submitted for decision after the parties filed their position paper be changed to regular procedure;
2. Whether a case originally tried under summary procedure and changed to regular procedure be restored to summary procedure after prohibited pleadings were filed and admitted;
3. Whether the amended complaint which include additional lot and did not reproduce the original complaint is admissible;
4. Whether the 48 defendants (petitioners) who had a family and a separate house can be consolidated in one complaint."

The petition should be dismissed. The indispensable elements of a petition for certiorari are: (a) that it is directed against a tribunal, board or officer exercising judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.[10] Quite often, this Court has warned that for the extraordinary writ to issue, it must be clearly established[11] that there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[12] It, therefore, follows that before a petition for certiorari can be instituted, all remedies available in the trial court must have first been exhausted.[13]

True, we have on certain occasions entertained petitions for certiorari despite the existence of the remedy of appeal; in those exceptional cases, however, either public welfare and the advancement of public policy have dictated[14] or the broader interests of justice have demanded,[15] or when the orders complained of are found to be patent nullities,[16] or that an appeal is considered clearly an inappropriate remedy.[17] In the instant case, however, the questions raised are issues evidently within the normal precincts of an appeal that cannot be peremptorily addressed by an extraordinary writ. It appears, in fact, that the petitioners have timely filed their notice of appeal, which is an adequate remedy; indeed, it is a bar to this petition.[18]

Let it also be emphasized that while this Court[19] has concurrent jurisdiction with the Court of Appeals,[20] as well as with the Regional Trial Courts[21] (for writs enforceable within their respective regions), to issue writs of mandamus, prohibition, or certiorari, the litigants are well advised, however, not to disregard the policy that has heretofore been set by us. In *Vergara, Sr. vs. Suelto*,[22] the Court, speaking through then Associate Justice, now Chief Justice, Andres R. Narvasa, said:

"We now turn * * * to the propriety of a direct resort to this Court for the remedy of mandamus or other extraordinary writ against a municipal court, instead of an attempt to initially obtain that relief from the Regional Trial Court of the district or the Court of Appeals, both of which tribunals share this Court's jurisdiction to issue the writ. As a matter of policy such a direct recourse to this Court should not be allowed. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. * * *. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe."

WHEREFORE, the petition is DISMISSED, and the prayer for temporary restraining order is DENIED. This case is remanded to the Metropolitan Trial Court of Parañaque, Branch 78, to allow the timely appeal of the petitioners to take its ordinary course in law. Costs against the petitioners.

SO ORDERED.

Feliciano, (Chairman), Bidin, and Romero, JJ., concur.

[1] Hon. Vivencio G. Lirio, Presiding Judge.

[2] Annex "A", Rollo, 12-16.

[3] Annexes "B" and "C", Ibid., 17-26.

[4] Annex "8", Rollo, 110.

[5] Annex "14", Ibid., 125.

[6] Per Judge Jose De La Rama; Annex "21", Ibid., 144.

[7] Annex "O", Ibid., 46-54.

[8] Annex "P", Ibid., 55.

[9] Annex "23", Rollo, 146-148.

[10] Rule 65, Sec. 1, Revised Rules of Court; Cochingyan, Jr. vs. Cloribel, 76 SCRA 361.

[11] Tan vs. Director of Forestry, et al., 125 SCRA 302, 322.

[12] Jose vs. Zulueta, 2 SCRA 574.

[13] Telephone Engineering & Service Co., Inc. vs. Workmen's Compensation Commission, et al., 104 SCRA 354, 360; De Gala-Sison vs. Maddela, 67 SCRA 478.

[14] Yu Cong Eng vs. Trinidad, 47 Phil. 385; People vs. Zulueta, 89 Phil. 752, 756.

[15] Tirona vs. Nañawa, 21 SCRA 395, 400.

[16] Fernando vs. Vasquez, 31 SCRA 288, 294, citing Clemente vs. Lukban, 53 Phil. 931, 934.

[17] Fernando vs. Vasquez, *ibid.*, citing Leung Ben vs. O' Brien, 38 Phil. 182, 188; Rocha vs. Crossfield, 6 Phil. 355.

[18] People vs. Villanueva, 110 SCRA 465,469; Matute vs. Court of Appeals, 26 SCRA 768; Jose vs. Zulueta, 2 SCRA 574; Daiz vs. Elosida, 1 SCRA 990; Bacabac vs. Delfin 1 SCRA 1194.

[19] Sec. 5[1], Art. VIII, Constitution.

[20] Sec. 9, B.P. 129.

[21] Sec. 21, B.P. 129.

[22] 156 SCRA 753.

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