

**CATALINO, ZOILO, FELISA AND LUISA, ALL SURNAMED DAVAC,
PETITIONERS, VS. THE COURT OF APPEALS, AND EPIFANIO, PAULO,
ANTONIO AND GREGORIO ALL SURNAMED FULLANTE,
RESPONDENTS.**

G.R. No. 106105. April 21, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review on certiorari seeking to set aside the Decision of the respondent court[1] dated April 3, 1992 in CA G.R. SP No. 26957 dismissing petitioners' petition for certiorari and its Resolution of June 4, 1992 denying their motion for reconsideration.

The records show that on July 7, 1983, petitioners filed a Complaint for Recovery of Ownership of Real Property against the private respondents Epifanio, Paulo, Antonio and Gregorio all surnamed Fullante. The case was docketed as Civil Case No. 293-A in the RTC, Antipolo, Rizal. The Complaint was answered in due time by the private respondents.

On December 22, 1986, a Compromise Agreement was submitted for approval of the trial court. The Agreement was signed by the petitioner Catalino Davoc "in his own right and in representation of his co-plaintiffs" (i.e., the other petitioners herein) and by "Pedro Belmi, counsel for the plaintiff." The Agreement was also signed by private respondent Paulo Fullante "in his own right and in representation of his co-defendants Epifanio, Antonio and Gregoria all surnamed Fullante," and by "Josefina N. Olitan, counsel for defendants." On January 2, 1987, the trial court rendered a Decision approving the Compromise Agreement.

The parties then tried to effectuate the Decision. On August 11, 1988, the trial court issued an Order directing the following:

- "1.) That the whole land, lots 1, 2, 3 and 4 will be surveyed;
- 2.) To be included in the survey is the right of way of the plaintiffs on lot 2 of not more than three (3) meters wide;
- 3.) That the parties will submit the names of three Geodetic surveyors within five (5) days from today, one of whom will undertake the survey as stated in no. 1 after raffle to be conducted in the presence of counsels of both parties before the Acting Clerk, Atty. Myrna Directo, on August 17, 1988 at 8:30 A.M. in the office of the Clerk of Court. The name of Engineer Benjamin Sales was submitted by the plaintiffs. The names of the other two geodetic engineers will be submitted by the defendants;
- 4.) The findings and result of the survey conducted and made by the surveyor selected on the basis of the raffle will be binding on the plaintiffs and defendants to terminate finally the rights of the parties on the questioned land;
- 5.) The expenses for the survey will be shouldered by the plaintiffs."

The Order was made pursuant to the agreement of the parties.

On September 22, 1988, the trial court modified its August 11, 1988 Order. It commissioned geodetic engineer Emiliano Santos to survey the subject lot. The modification was prompted by the motion of Atty. Josefina Olitan, counsel of private respondents, which was not opposed by Atty. Belmi, counsel of petitioners.

Engineer Santos, however, failed to submit the survey plan of the subject lots. Upon motion of Atty. Belmi, the trial court appointed geodetic engineer Jesus Pampilona to do the survey plan in an Order dated October 26, 1990. Atty. Olitan did not oppose the motion.

In the interim, private respondents changed their counsel. Atty. Aladdin F. Trinidad became their counsel. The proceedings took a new twist. On November 26, 1990, Atty. Trinidad filed a Motion to Declare Null and Void the Compromise Agreement and the Decision approving the same. He charged that Paulo Fullantes had no power of attorney to sign for the other private respondents. Petitioners opposed the Motion. They alleged:

x x x

"2. That the aforesaid Compromise Agreement can not now be assailed by the defendants on the following grounds:

- (a) It was signed by one of the defendants for himself and in behalf of his co-defendants who are his brothers;
- (b) A Compromise Agreement even if signed only by the counsel without authorization from the clients is not void but merely unenforceable which as in the case at bar may be ratified by the said defendants expressly or impliedly as shown by the subsequent events which took place since the execution of said Compromise Agreement (*Bumanlag v. Alzate*, 144 SCRA 480, 481);
- (c) Defendants are guilty of laches; and, they are on estoppel to question the validity of said Compromise Agreement.

3. The contention of defendants that the Compromise Agreement not signed by the parties themselves or signed by one of them for and in behalf of others without any written special authority to compromise is null and void is not correct because according to the doctrine laid down in the case of *Dungo vs. Lopena*, 6 SCRA 1007, and the cited case of *Dumanlag vs. Alzate*, supra, it is only unenforceable and, therefore, may be ratified expressly or impliedly by the conduct of the party or parties assailing the aforesaid Compromise Agreement."

On March 7, 1991, the trial court declared its Decision dated January 2, 1987 "unenforceable against the defendants Epifanio Fullante, Antonio Fullante and Edgardo Fullante . . ." No further challenge was made against this Order.

For reasons which do not appear on record, the trial court set the pre-trial of the case on June 20, 1991. On June 17, 1991, petitioners filed a Motion to Declare Judgment by Compromise Ratified. They alleged, inter alia, viz:

x x x

"2. That while said Decision and Compromise Agreement were "unenforceable", plaintiffs respectfully submit that the same were duly ratified by the defendants as shown by their subsequent conduct spread in the records of the above entitled case after said Decision and Compromise Agreement were sought to be enforced by the plaintiffs, viz:

- (a) On 11 August 1988 this Honorable Court issued an Order requiring the parties to submit the names of the surveyors who will conduct the survey of the land subject matter of the Compromise Agreement, one of the surveyors to be proposed by the plaintiff and the other two by the defendants; and, the said Order was issued by

agreement of the parties;

(b) On 17 August 1988 defendants, thru Counsel, moved in open court to modify No. 3 of the Order dated 11 August 1988 proposing that Geodetic Engineer Emiliano Santos be designated by the Honorable Court to conduct the survey and to submit to the Honorable Court not later than 22 September 1988 the result of the survey of the land subject matter of the Compromise Agreement; and, accordingly, the Honorable Court issued an Order directing Geo. Engr. Emiliano Santos to survey the whole lot in accordance with the compromise agreement entered into by the plaintiffs and defendants on October 29, 1986 at the expense of the plaintiffs; and that he is further ordered to submit to the Court the result of his survey not later than September 22, 1988;

(c) On 12 December 1988 defendants, thru counsel, submitted a Manifestation, stating among others, that they had the land in question, subject matter of the Compromise Agreement and prayed the Honorable Court to approve the survey made thereon by said Geodetic Engineer Emiliano Santos, thru one Domingo Rigunay; however, the said survey was not approved because it was not signed by the Geodetic Engineer Santos who died;

(d) On 18 February 1989 defendants, thru counsel, submitted another Manifestation, stating among others, that the Court's appointed surveyor be required to conduct the survey inasmuch as the survey conducted by their Geodetic Engineer was not signed;

(e) When plaintiffs submitted the name of Geodetic Engineer Jesus Pampilona, CENRO, DENR, Taytay, Rizal, to undertake the relocation survey of the property subject matter of the Compromise Agreement, defendants did not interpose objection thereto; and, the Honorable Court accordingly appointed Geo. Engr. Pampilona;

(f) The property subject matter of Compromise Agreement was surveyed by Jose San Jose of Teresa, Rizal, with the consent and knowledge of the defendants; however, the survey of Jose San Jose was not approved because it turns out that Jose San Jose was not a licensed surveyor."

On August 6, 1991, the trial court denied the motion. It also reset the pre-trial of the case on August 15, 1991. Petitioners moved for reconsideration but their plea was rejected on September 24, 1991.

On January 3, 1992, petitioners filed with the respondent court a petition for certiorari under Rule 65. They prayed:

"PREMISES CONSIDERED, it is respectfully prayed that the instant Petition be GIVEN DUE COURSE; and, after due hearing, judgment be rendered:

1 - REVERSING AND SETTING ASIDE the Order dated 7 March 1991, Annex "K", declaring as "unenforceable the Judgment by Compromise in Civil Case No. 148-M of the respondent Court; the Orders dated 6 August 1991 and 24 September 1991, Annexes "M" and "N", respectively, denying the motion of petitioners to declare the Judgment by Compromise as valid and binding between the parties;

2 - DECLARING the Judgment by Compromise, Annex "D", as valid and binding between the parties;

3 - ORDERING the private respondents to pay the costs of this suit.

PETITIONERS further pray for such other equitable reliefs under the circumstances."

On April 3, 1992, the respondent court dismissed the petition. It held:

x x x

"With those holdings as guide, the Order of March 7, 1991 is a final order. As decreed in the dispositive portion of the Order, the x x x decision of the Court dated January 2, 1987, based on the Compromise Agreement, is hereby declare(ed) unenforceable against the defendants Epifanio Fullante, Antonio Fullante and

Edgardo Fullante x x x, "and, therefore, there is nothing more that can be done with the Order before the respondent court insofar as the said defendants are concerned. The Order of March 7, 1991, is a final order, and appealable, under Section 2, Rule 41, Rules of Court, within thirty (30) days from receipt of the Order (sec. 3, id.). Since no appeal was interposed within the reglementary period for appeal, the order became final, is unalterable and no additions can be made thereto and nothing can be done therewith even by the respondent court which issued it. On these bases, the respondent court did not err in denying the motion to declare the judgment by compromise ratified, as well as the motion for Reconsideration of the Denial Order.

Another issue that should be looked into is whether the petition for "Certiorari under Rule 65" is an appropriate remedy? A petition for certiorari under section 1 of Rule 65, Rules of Court, is proper to correct errors of jurisdiction, committed by the lower court without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of jurisdiction. In other words, under Rule 65, it is errors of jurisdiction that are reviewable by certiorari, and the instant petition, therefore, is not available in this case as the order sought to be reviewed concerns errors of judgment which is properly reviewable by appeal. Moreover, this original action for certiorari can not be a substitute for the lost appeal.

Of course, there is an "appeal by certiorari" under Rule 45 of the Rules of Court, but that mode of appeal is from the judgment of this Court of Appeals to the Supreme Court, and not from the judgment of the trial court to this Court, which is covered by Rule 41.

In any event, since the adoption of Circular No. 2-90, requiring "strict" compliance as of March 9, 1990, there is no more "common mode of appeal to Court of Appeals and Supreme Court." The provisions of Rules 41 and 42 of the Rules of Court, prescribing a common mode of appeal to the Court of Appeals and to the Supreme Court, and a common procedure for considering and resolving an appeal, "are no longer in force, x x x have been largely superseded and rendered functus officio by certain statutes which wrought substantial changes in the appellate procedures in this jurisdiction, notably: Republic Acts Nos. 5433 and 5440 (both effective on September 9, 1968) and 6031 (effective August 4, 1969), and Batas Pambansa Blg. 129 (effective August 14, 1981);" and that "appeals by certiorari will not lie with the Court of Appeals," and that "an appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed."

Thus, both from the substantive and procedural standpoints, the petition is not meritorious."

Petitioners' motion for reconsideration was denied on June 4, 1991.

Petitioners then filed the present petition charging grave abuse of discretion on the part of the respondent court as follows:

"A - IN DECLARING THE ORDER OF 7 MARCH 1991 DECLARING THE COMPROMISE AGREEMENT AND JUDGMENT BY COMPROMISE AS UNENFORCEABLE, NOT MERELY INTERLOCUTORY; AND, THEREFORE, APPEAL IS THE PROPER REMEDY, NOT CERTIORARI;

B - IN DENYING DUE COURSE AND DISMISSING THE PETITION FOR CERTIORARI PURSUANT TO CIRCULAR NO. 2-90;

C - IN NOT DECLARING THE JUDGMENT BY COMPROMISE AS VALID AND BINDING BETWEEN THE PARTIES, AND NOT DECLARING PRIVATE RESPONDENT IN ESTOPPEL TO QUESTION THE VALIDITY OF SAID JUDGMENT."

We find no merit to the petition.

The respondent court cannot be faulted for its ruling that the Order of the trial court dated March 7, 1991 constitutes a final order and that the remedy of an aggrieved party against it is appeal. A final order is a settled concept in our corpus of jurisprudence. As explained by Mr. Justice Florenz D. Regalado:[2]

"1. The term "final order" is used in two senses depending on whether it is used on the issue of appealability or on the issue of binding effect. For purposes of appeal, an order is "final" if it disposes of the action, as distinguished from an interlocutory order which leaves something to be done in the trial court with respect to the merits of the case (De la Cruz, et al. vs. Paras, et al., L-41053, Feb. 27, 1976). For purposes of binding effect or whether it can be subject of execution, an order is "final" or executory after the lapse of the reglementary period to appeal and no appeal has been perfected (See Perez, et al. vs. Zulueta, L10374; Sept. 30, 1959; Cf. Denso [Phil.] Inc. vs. IAC, et al., G.R. No. 75000, Feb. 27, 1987)."

The Order of March 7, 1991 declaring the Decision unenforceable wrote finis to the case except as to petitioners and private respondent Paulo Fullante who signed the Compromise Agreement. If the trial court still reset the case after its Order of March 7, 1991, it must be to determine how its Decision can be enforced but only as between petitioners and private respondent Paulo Fullante. The unenforceability of the Decision against the other private respondents can no longer be litigated as the Order of March 7, 1991 has already attained finality.

Petitioners did file a Motion to Declare Judgment by Compromise Ratified. That was done on June 17, 1991 or more than three (3) months after the Order of March 7, 1991. The motion was denied by the trial court, and rightly so. For clearly, the motion was intended to assail anew the final Order of March 7, 1991, albeit, in a roundabout manner. What cannot be done directly cannot be done indirectly is a familiar rule even to students of law. Considering the finality of the Order of March 7, 1991, the trial court had no more jurisdiction to act on petitioners' motion. Moreover, the grounds raised by petitioners are the same grounds raised by them when they opposed private respondents' Motion to Declare Null and Void the Compromise Agreement and the Decision approving the same, *supra*. In its Order of March 7, 1991, the trial court held that except as to Paulo Fullante, the Decision was unenforceable. It did not rule that the Decision had, nevertheless, been ratified by subsequent acts of the parties. To repeat, this Order of March 7, 1991 was not appealed by petitioners.

IN VIEW WHEREOF, the petition for review on certiorari is dismissed for lack of showing that the respondent court committed grave abuse of discretion in its Decision of April 3, 1992 and Resolution of June 4, 1992 in CA G.R. SP No. 26957. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Former Seventh Division composed of Associate Justices Serafin Camilon (Chairman), Artemon Luna (ponente) and Celso L. Magsino.

[2] Remedial Law Compendium, 5th ed., p. 260.

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