

## **SPOUSES FELIPE BUÑAG AND IRMA BUÑAG, PETITIONERS, VS. THE COURT OF APPEALS, HON. MANUEL ROMAN, PEDRO MAGSISI AND EMILY HINANG, RESPONDENTS.**

*G.R. No. 107364. February 25, 1999*

Ponente: MENDOZA, J.

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### **MENDOZA, J.:**

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, dated September 30, 1992, which affirmed the order, dated June 24, 1991, of the Regional Trial Court, Branch XLII, Pinamalayan, Oriental Mindoro for the removal of the house of petitioners from a parcel of agricultural land in Sto. Niño, Pinamalayan, Oriental Mindoro. The order was issued pursuant to a decision of the trial court ordering petitioners to vacate the land in question and to restore its possession to herein private respondents.

The land in question, which consists of about 10,000 square meters, is devoted to palay, coconuts, and bananas. In 1964, private respondents were instituted by Juanita Valdez, the owner of the land, as tenants, delivering two-thirds of the harvest to the latter. In 1976, the parties changed their relation to leasehold under which private respondents paid rents to Juanita Valdez equal to seven and a half cavans of rice per harvest.

Private respondents faithfully complied with their obligation to the landowner. However, on November 4, 1985, petitioners, who are the son-in-law and the daughter of Juanita Valdez, took over the land and had it plowed over the protest of private respondents.

On November 15, 1985, private respondents, therefore, filed a complaint in the Regional Trial Court of Pinamalayan, Oriental Mindoro to recover possession of the parcel of agricultural land. On November 15, 1988, judgment was rendered in their favor as follows:

WHEREFORE, premises considered, this Court finds that plaintiffs were illegally ejected by the defendants from their leasehold landholdings and hereby renders judgment against them and orders said defendants:

- A. To reinstate plaintiffs to the one (1) hectare land occupied by them prior to their ejectment as leaseholders under the Agrarian Land Reform Code;
- B. To carry successfully such reinstatement, defendants are ordered to vacate the premises covered by the possession of plaintiffs as such leasehold, which temporarily given to them and other persons brought by defendants or may be found in the premises are also ordered to vacate the same;
- C. To pay plaintiffs the amount of P8,700.00 as unrealized produce of the land in question, which they are entitled because of their unlawful ejectment; and
- D. Pay plaintiffs P2,000.00 as attorney's fees; and
- E. Making the injunction permanent.

SO ORDERED.[2]

Petitioners appealed to the Court of Appeals, but the decision of the trial court was affirmed. As no further appeal was taken, the decision of the trial court became final and executory on May 21, 1990. Accordingly, private respondents filed with the trial court a motion for the issuance of a writ of execution, which the latter granted. The dispositive portion of the writ of execution, dated January 9, 1991, ordered the sheriff as follows:

NOW THEREFORE, you are hereby commanded to carry into effect the afore-quoted dispositive portion of the decision of this Court and reinstate plaintiffs to the one hectare of land which was tenanted by them, requiring defendants or whosoever persons may be found in the property to vacate the same and pay plaintiffs the amount of P8,700.00 as actual damages and P2,000.00 as attorney's fees, together with your lawful fees. The plaintiffs should be required to pay beforehand to the Clerk of Court the amount of P2,000.00 as execution fee. If sufficient property cannot be found to satisfy this execution and the lawful fees, then you are commanded to make satisfaction of the said sums of money out of the lands and buildings of the said defendants in the manner required by the Rules of Court, and make return of your proceedings with this writ within 60 days from receipt thereof.[3]

In view of the refusal of petitioners to remove their house from the land, private respondents moved for the issuance of an order of demolition.[4] After due hearing, their motion was granted by the trial court in its order, dated June 24, 1991.

Petitioners then filed a special civil action for certiorari in the Court of Appeals assailing the order of demolition of the trial court. In its decision of September 30, 1992, the Court of Appeals dismissed petitioners' action. Hence, this petition.

Petitioners argue: (1) that their house is not within the land in question; (2) that even if it is, the decision of the trial court of November 15, 1988 does not require the removal of improvements on the parcel of land and, therefore, the order of demolition issued on June 24, 1991 is void; and (3) that the filing in the Department of Agrarian Reform (DAR) of a complaint for eviction against private respondents for nonpayment of leasehold rentals constitutes a supervening event which justifies the recall of the order of demolition.[5]

First. It is settled that an issue which was not raised in the trial court cannot be raised for the first time on appeal.[6] This principle applies to special civil actions for certiorari under Rule 65. In the case at bar, petitioners' claim that their house, which the trial court ordered removed, is not built on the land in dispute was made for the first time in the Court of Appeals. Petitioners' counsel was served a copy of the motion filed by private respondents for the issuance of an order of demolition, yet petitioners did not raise the claim that their house was not built on the land in question. Indeed, despite the fact that petitioners' counsel was given notice of the hearing on the motion scheduled on April 17, 1991, petitioners and their counsel did not appear in court to oppose it.[7] Hence, petitioners are estopped from raising the issue in this Court.

Indeed, in a special civil action for certiorari under Rule 65 of the Rules of Court, questions of fact are not generally permitted, the inquiry being limited essentially to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[8] Since the question whether petitioners' house is within the land in dispute was not raised in the trial court, the appellate court's failure to consider this matter cannot constitute grave abuse of discretion or be a basis for any finding of reversible error on review in this Court. It is noteworthy that apart from the bare assertion of petitioners, no evidence has been cited by them to show that their house is indeed not within the land in question.

Second. Nor is there merit in the contention that, since the decision reinstating private respondents to the possession of the land does not expressly require the removal of improvements and structures thereon, the order of

demolition issued by the trial court varied the decision. Rule 39, §§13 and 14 of the 1964 Rules of Court provide:

SEC. 13. How execution for the delivery or restitution of property enforced. <sup>¾</sup> The officer must enforce an execution for the delivery or restitution of property by ousting therefrom the person against whom the judgment is rendered and placing the judgment creditor in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the judgment and costs included in the writ of execution.

SEC. 14. Removal of improvements on property subject of execution.<sup>¾</sup> When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

A judgment for the delivery or restitution of property is essentially an order to place the prevailing party in possession of the property. If the defendant refuses to surrender possession of the property to the prevailing party, the sheriff or other proper officer should oust him. There is no need for an express order to this effect to be stated in the decision. Nor is there a need to state categorically in the decision that in such event the sheriff or other proper officer shall have the authority to remove the improvements on the property if the defendant fails to do so within a reasonable period of time. Precisely, the law requires in cases where there are improvements on the land that a special order be issued by the court, directing the removal of such improvements. It is apparent petitioners confuse the order of demolition with the decision ordering the eviction of the defendant.

In the instant case, petitioners' counsel was notified of the motion filed by private respondents for the issuance of an order of demolition. However, as already noted, he did not file an opposition to the motion. Neither did he and petitioners attend the hearing on the motion despite notice to them. After the order of demolition was issued, petitioners were given 15 days to remove their house from the land in question.[9] There was thus compliance with Rule 39, §14 of the Rules of Court.

Third. The petitioners contend that, although the execution of a decision is a ministerial function of the court, nonetheless, if a supervening event occurs, rendering execution inequitable, the execution should be stayed. Here, according to petitioners, they filed a complaint for eviction against private respondents in the DAR. They claim that such filing constitutes a supervening event.

Undoubtedly, a party cannot create an event in order to excuse noncompliance with a final decision against him. It is noteworthy that the complaint filed by petitioners was dismissed by the DAR in an order, dated January 13, 1992.[10] At the time petitioners filed this case with this Court on November 16, 1992, they knew that the complaint had already been dismissed by the DAR. They contend that the complaint had been refiled.[11] It is clear, however, that in refiling the complaint, petitioners' counsel is merely trying to delay the execution of the decision of the trial court, dated November 15, 1988.

It is settled that, generally, an order of execution is not appealable because otherwise a case would never end.[12] If the order of execution cannot be appealed, neither can the order of demolition issued in pursuance thereof be appealable.[13] Neither can an order of demolition be set aside through a special civil action for certiorari except upon a showing that the trial court gravely abused its discretion in issuing the same.[14] In the instant case, the Court of Appeals correctly found that there is no sufficient evidence to show that the trial court gravely abused its discretion in issuing the order of demolition.

WHEREFORE, the petition is hereby DENIED and the decision of the Court of Appeals, dated September 30, 1992, is AFFIRMED.

**SO ORDERED.**

Bellosillo (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

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[1] Per Justice Jainal D. Rasul and concurred in by Justices Emeterio C. Cui and Segundino G. Chua.

[2] Memorandum of Private Respondents, Annex B, Rollo, p. 109.

[3] Id., Annex D, Rollo, p. 126.

[4] Petition, Annex H, Rollo, pp. 29-30.

[5] Petition, Rollo, p. 7.

[6] *De la Santa v. Court of Appeals*, 140 SCRA 44, 51 (1985).

[7] Petition, Annex H, Rollo, pp. 29-30.

[8] *Insular Bank of Asia and America v. Court of Appeals*, 228 SCRA 420, 426-427 (1993).

[9] Petition, Annex H, Rollo, pp. 29-30.

[10] Comment, Annex A, Rollo, p. 50.

[11] Reply, Rollo, p. 53.

[12] *Reburiano v. Court of Appeals*, G.R. No. 102965, Jan. 21, 1999.

[13] *David v. Ejercito*, 71 SCRA 484, 488 (1976).

[14] *Supra*, note 12.

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