

QUINTIN F. FELIZARDO, PETITIONER, VS. COURT OF APPEALS & NEMESIO B. JOSE, RESPONDENTS.

G.R. No. 112050. June 15, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

Private respondent Nemesio B. Jose, as owner-lessor of a house and lot located at No. 63-20th St., East Bajac-Bajac, Olongapo City, filed on February 24, 1992, an action for ejectment with an application for the issuance of a writ of preliminary mandatory injunction against petitioner Quintin Felizardo.[1] This was docketed as Civil Case No. 3163 in the Municipal Trial Court of Olongapo City.

On February 27, 1992, summons was issued directing the petitioner to file an answer and informing him that the Rule on Summary Procedure would be applied.[2]

In his answer, the petitioner averred inter alia that the private respondent's allegations to support his prayer for a preliminary injunction were utterly false and intended only to evade the requirements of P.D. 1508[3] for prior barangay conciliation.[4]

At the preliminary conference and in his position paper, the petitioner questioned the jurisdiction of the court and the sufficiency of the private respondent's cause of action for non-compliance with the said decree.

On September 1, 1992, judgment was rendered against the petitioner.[5] On September 17, 1992, upon motion of the private respondent, the court issued an order for the execution of its decision.[6]

On that same date, the petitioner filed with the Regional Trial Court of Olongapo City a petition for certiorari with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction.[7]

On October 7, 1992, that court issued a temporary restraining order against the enforcement of the writ of execution.[8] Later, however, on October 23, 1992, it dismissed the petition on the ground that certiorari with injunction was not the proper remedy of the petitioner, appeal being then still available to him.[9]

The dismissal was sustained by the respondent Court of Appeals.[10] His motion for a reconsideration having been denied,[11] Felizardo is now before us in this petition for review on certiorari.

The core issue is the propriety of the special civil action for certiorari instituted by the petitioner before the Regional Trial Court of Olongapo City to challenge the judgment rendered by the court a quo.

The petition has no merit.

It is settled that the writ of certiorari is available only where the tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[12] It is also the rule that this special civil action should not be allowed as a substitute for an ordinary appeal or where there are other remedies

available.[13]

There is no doubt that the Municipal Trial Court of Olongapo City had jurisdiction over the subject-matter of the case lodged by the private respondent and over the person of the petitioner, who had filed his answer to the complaint. The only question is whether that court, in continuing to act on the case despite the lack of prior barangay conciliation as required by the Revised Katarungang Pambarangay Law, committed a mere error of judgment that could be reversed in an ordinary appeal or an error of jurisdiction correctible by certiorari.

Section 412 of the Revised Katarungang Pambarangay Law provides:

SEC. 412. Conciliation. - (a) Pre-condition to filing of complaint in court. - No complaint, petition, action, or proceeding involving any matter within the authority of the Lupon shall be filed or instituted directly in court or any other government office for adjudication unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or the pangkat secretary, attested to by the lupon chairman or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

(b) Where the parties may go directly to court. - The parties may go directly to court in the following instances:

- (1) Where the accused is under detention;
- (2) Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;
- (3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite; and
- (4) Where the action may otherwise be barred by the statute of limitations.

x x x

In the case at bar, the complaint for ejectment filed by the private respondent contained an application for the issuance of a writ of preliminary mandatory injunction, as allowed under Section 33 of BP 129. The suit would, therefore, ostensibly fall under the exception mentioned in Section 412 (b) of the Katarungang Pambarangay Law. A different conclusion must be reached, however, after a closer look at the attendant circumstances in light of the following allegations made by the private respondent in his complaint:

x x x

9. Such act of subdividing and subleasing said property by the defendant to other persons has resulted in great irreparable loss and great injustice to the plaintiff and as a result thereof plaintiff incurred actual damages to be proven during the proceedings.

10. Plaintiff is entitled to the relief demanded which consists of immediately restraining the further subdivision or alteration and subleasing of the property and enjoining the defendant from proceeding with any alteration, subdivision or subleasing of the properties subject of the controversy.

11. Defendant is doing, or about to do, is procuring or suffering to be done, the act herein complained of, in violation of plaintiff's right and tending the judgment of the case ineffectual.

As correctly pointed out by the petitioner, the issue of the subdividing and subleasing of the property may no longer be raised again in this case because it had already been adjudicated in the antecedent case between the petitioner and the private respondent. This was Civil Case No. 3031, where it was held:

On the matter of subleasing the property, plaintiff underscored the contention of the defendant that since part of the provisions in the contract between them is to the effect that he may use the premises in question for

business purposes, this is controverted by the specific provision thereat that the same should not be subleased to other persons. While the terms appear to be so broad as to be susceptible of different interpretations and while the court likewise does not countenance that a specific provision controls a general provision in a contract, however, it is to be noticed that the intent of the parties to a contract should also be given credence. It likewise cannot be countenanced by this court that the plaintiff has no knowledge about this alleged violation affecting the subleasing, in a way that when the rooms were constructed, it was with the knowledge of the plaintiff as contained in the affidavits submitted by the defendant forming part of his position paper to this effect. Therefore there appears to be an implied consent upon the plaintiff as it is quite impossible that the plaintiff would not notice that a construction was going on the leased premises. The plaintiff therefore is estopped from claiming otherwise. (Cited in the CA decision, p. 7.)

The above finding is now final and conclusive in view of the private respondent's withdrawal of his appeal therefrom. As the Regional Trial Court of Olongapo City observed:

The court notes plaintiff had virtually withdrawn his own appeal concerning the finding of the lower court that the construction of additional rooms and the consequent subleasing of the properties to third persons were with the consent of the plaintiff and which therefore cannot be treated as additional ground to eject the defendant. x x x. (Cited in CA decision, p. 9.)

That withdrawal deprived the private respondent's prayer for a preliminary mandatory injunction of all legal basis and removed his complaint from the operation of Sec. 412 (b) of the Katarungang Pambarangay Law.

It is also worth noting that during the preliminary conference and in his position paper, Jose had conveyed the impression that he was no longer interested in pursuing his application for such provisional remedy and was limiting his cause of action to the recovery of the unpaid rentals.[14] This strengthens all the more the petitioner's contention that the prayer was merely a pretense designed to avoid the requirements of the said law.

Whether or not the court acted correctly in proceeding with the case even without the prior barangay proceeding is a procedural question that could not be reviewed in a special civil action for certiorari but only in an ordinary appeal. A similar observation is made on its declaration that it was incumbent upon the petitioner to prove that the private respondent's allegations in support of the prayer for preliminary injunction was false and that compensation or set-off was not a proper defense. These conclusions would at most constitute errors of judgment reviewable only on appeal and not errors of jurisdiction reviewable by certiorari.

An additional consideration against the petitioner is his contention that appeal, although available, was not a plain, speedy and adequate remedy in the ordinary course of law. He errs again.

The judgment in forcible entry and unlawful detainer cases, if in favor of the plaintiff, must be executed immediately to prevent further damage to him arising from loss of possession. Nevertheless, the defendant is not entirely without recourse. Under the Rules of Court, he may stay such immediate execution by a) perfecting an appeal; b) filing a supersedeas bond; and c) periodically depositing with the appellate court the rentals falling due during the pendency of the appeal.

These remedies are expressly provided for in Rule 70, Section 8, of the Rules of Court, reading in part as follows:

SEC. 8. Immediate execution of judgment. How to stay same. - If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the municipal or city court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the municipal or city court to exist. x x x

Although an order for the execution of the judgment in favor of the private respondent had already been issued and Felizardo's ejectment from the leased property was imminent, he could still prevent the implementation of the said order by availing himself of the above remedies. But he did not.

His reason was that "there is no way that Mr. Jose can lose in Olongapo City and there is nothing to prevent him from securing a writ of execution notwithstanding the filing of a supersedeas bond. This had happened before in the very same MTCC and in the very same RTC in the first case between him and herein petitioner."

It appears, though, that the petitioner's apprehensions are unfounded. The record shows that in the earlier case between him and the private respondent, he was in fact able to obtain the suspension of the adverse judgment against him during the pendency of his appeal with the Regional Trial Court by filing a supersedeas bond.[15]

The petitioner invokes the ruling in the case of *Echus vs. Court of Appeals*[16] which reaffirmed *Valencia vs. Court of Appeals*,[17] thus:

x x x, that certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. Also, the fact that the losing party had appealed from the judgment does not bar the certiorari action filed in respondent court as the appeal could not be an adequate remedy from such premature execution.

That petitioner could have resorted to a supersedeas bond to prevent execution pending appeal, as suggested by the two lower courts, is not to be held against him. The filing of such bond does not entitle him to the suspension of execution as a matter of right. It cannot, therefore, be categorically considered as a plain, speedy and adequate remedy. Hence, no rule requires a losing party so circumstanced to adopt such remedy in lieu or before availment of other remedial options at hand.

Furthermore, a rational interpretation of Section 3, Rule 39 should be that the requirement for a supersedeas bond presupposed that the case presents presumptively valid occasion for discretionary execution. Otherwise, even if no good reason exists to warrant advance execution, the prevailing party would unjustly compel the losing party to post a supersedeas bond through the simple expedient of filing a motion for, and the trial court improvidently granting, a writ of execution pending appeal although the situation is violative of Section 2, Rule 39. x x x

The above observations are not squarely applicable to the case at bar because what were sought to be reviewed in the certiorari proceedings instituted by the petitioner in those cases were the orders of execution pending appeal, which were interlocutory and unappealable. Moreover, the orders of execution in those cases were for the collection of damages and attorney's fees and were issued pursuant to Section 2, Rule 39, of the Rules of Court. This section requires good reasons to support the issuance of the writ. Certiorari was available to challenge the orders, which were annulled because there was no showing of such good reasons to sustain the execution pending appeal.

By contrast, what was challenged in the special civil action for certiorari filed by the herein petitioner with the Regional Trial Court was not merely the order of execution but the judgment of the court a quo on the merits of the case. This was final and appealable. Besides, the writ in this case was issued under Section 8, Rule 70, of the Rules of Court, under which it is not necessary to show good reasons for the immediate execution of the judgment against the defendant. This is an ejectment case. As the Rules of Court require the judgment in such cases to be executed immediately, the writ of execution can be stayed only upon compliance with the requirements of the said section.

It is understood that the trial court retains its discretion to issue an order of execution pending appeal even when the defendant posts a supersedeas bond. Of course, this discretion is not absolute. The court can still disregard the

supersedeas bond but only when there are special and compelling reasons justifying immediate execution.[18] If that discretion is exercised arbitrarily, the aggrieved party has the right to question such act in a petition for certiorari.

To recapitulate, when the Municipal Trial Court ruled that it could act on the complaint for ejectment filed by the private respondent even without prior barangay conciliation proceedings, it committed a mere error of judgment and not of jurisdiction. We have held in many cases that while the referral of a case to the Lupon Tagapayapa is a condition precedent for the filing of a complaint in court, non-compliance therewith cannot affect the jurisdiction which the court has already acquired over the subject matter and over the person of the defendant.[19] Hence, the remedy available to the petitioner was to question the ruling of the court a quo in an ordinary appeal and not, as he mistakenly did, in a special action for certiorari.

At any rate, even assuming that the petition for certiorari filed by the petitioner was the proper remedy, the same cannot be granted as it cannot be said that the court a quo committed grave abuse of discretion in finding the allegations for the issuance of preliminary injunction to be sufficient compliance with the Katarungang Pambarangay Law. We agree with the Regional Trial Court that:

Thus, when the lower court allegedly disregarded the counterclaims of petitioner, when it refused to rule on "compensation off-setting" and ruled that the application for a provisional remedy in the complaint for ejectment was not sham or that it was not proved as such, and also when said court failed to dismiss the case for lack of compliance with the requirement of PD 1508 - there was no grave abuse of discretion on the part of the lower court. x x x It cannot be said that respondent judge acted in a capricious, whimsical, arbitrary or despotic manner to be said to be equivalent to lack of jurisdiction.

Besides, as already pointed out, the petitioner had other plain, speedy and adequate remedies available to him under Rule 70, Section 8, of the Rules of Court.

WHEREFORE, the petition is DENIED and the appealed judgment is AFFIRMED, with costs against the petitioner.

Davide, Jr., Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Rollo, p. 31.

[2] Rollo, p. 36.

[3] Repealed and now replaced by Secs. 399-422, Chap. 7, Title I, Book III & Sec. 515, Title I, Book IV RA. 7160, otherwise known as the Local Government Code of 1991.

[4] Rollo p. 37.

[5] Decided by Judge Luz V. Tordesillas; Rollo, p. 67.

[6] Rollo, p. 73.

[7] Rollo, p. 74.

[8] Original Record, p. 137.

[9] Decided by Judge Leopoldo T. Calderon, Jr.; Rollo, p. 95.

[10] Penned by Galvez, J. with Javellana and Elbinias, JJ. concurring; Rollo, p. 121.

[11] Rollo, p. 126.

[12] Section 1, Rule 65, Rules of Court; Ruiz v. Castro, 220 SCRA 490; Salas v. Castro, 216 SCRA 198; Zagada v. Civil Service Commission, 216 SCRA 114.

[13] Yap v. IAC, 220 SCRA 245; Antonio v. IAC, 216 SCRA 214; Aqualyn Corporation v. Court of Appeals, 214 SCRA 307.

[14] Rollo, p. 63; CA Rollo, p. 16.

[15] Reply, pp. 19-20; Rollo, p. 155.

[16] 199 SCRA 381.

[17] 184 SCRA 561.

[18] City of Manila vs. Court of Appeals, 72 SCRA 98.

[19] Empaynado v. Court of Appeals, 204 SCRA 870; Blardony v. Cascolluelo, 182 SCRA 825; Fernandez v. Militante, 161 SCRA 695; Gonzales v. Court of Appeals, 151 SCRA 289; Millare v. Hernando, 151 SCRA 484; Ebol v. Amin, 135 SCRA 438; Royales v. IAC, 127 SCRA 470.

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