JACINTO OLAN AND RENATO EBALLE, PETITIONERS, VS. COURT OF APPEALS, SPOUSES LIBRADO F. VILLANUEVA AND TOMASA L. IGNACIO, RESPONDENTS.

G.R. No. 116109. September 14, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a Petition for Review on Certiorari[1] and Mandamus to set aside the Resolution of the Court of Appeals[2] on April 11, 1994 in CA-GR. SP No. 31618 entitled "JACINTO OLAN and RENATO EBALLE versus Hon. Eustaquio P. Sto. Domingo, Presiding Judge of Regional Trial Court of Calamba, Laguna, Branch 35, et. al.", which dismissed herein petitioner's Petition for Review, and to order the respondent Court of Appeals to allow petitioners to submit evidence in support of their contention that the lot they were possessing was not the lot described in the dispositive portion of the decision of the Municipal Trial Court in Ejectment Case No. 979.

Petitioners Jacinto Olan and Renato Eballe were defendants in Ejectment Case No. 929 in the Municipal Trial Court (MTC) of Los Baños, Laguna filed by herein respondent spouses Librado Villanueva and Tomasa Ignacio. The MTC[3] ordered OLAN and EBALLE to entirely vacate Lot 3839 and Lot 3842, both of the Los Baños Cadastre 450-D, situated at Brgy. Timugan, Los Baños, Laguna, which lots said defendants are now unlawfully occupying, and to turn them over to the possession of plaintiffs LIBRADO VILLANUEVA and TOMASA L. IGNACIO[4]

Petitioners appealed the decision to the Regional Trial Court (RTC) of Calamba, Laguna which affirmed the decision of the MTC. A writ of execution pending appeal was granted by the RTC which petitioners moved to quash in the Court of Appeals[5] (CA. G.R. No. 30812) on the ground that the lot occupied by petitioners was different from the lots ordained or decreed in the dispositive portion of the MTC decision. The Motion to Quash the writ of execution was denied for failure to file a bond to stay execution; the court added that:

> "Furthermore, the Motion to Quash Writ of Execution" dated March 4, 1993 and "Motion to Relocate Lots subject Matter of Writ of Execution" dated March 24, 1993, filed by counsel for defendants on the ground that defendants were occupying a different lot (Lot 8253) from that which is the object of the writ of execution of Lot 3839 or 3842, subject matter of the decision (the Motion for Relocation having been reiterated before this court by counsel for petitioner), were correctly denied by the Municipal Court of Los Baños, Laguna, in Civil Case No. 979, on October 1, 1982, which judicially inspected the property in question, the parties therein, including the petitioner being present, which inspection of the property was even a part of the order of the Regional Trial Court, Branch 37, Calamba, Laguna, in Civil Case No. 176-83-C, on February 9, 1983, without petitioners questioning or raising the issue that the property object of the ocular inspection and now subject of the writ of execution was a property different from that which is the object of the complaint and decision o the court.
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> It should be noted that it was not until a writ of execution of the decision in Civil Case No. 979 of the Municipal Trial Court pending appeal was issued by respondent court on January 23, 1993 that respondents

> claimed for the first time that the lot, subject of the ocular inspection and subject matter of the decision, was not the lot in question."[6]

Meanwhile, petitioners appealed the decision of the RTC to the Court of Appeals (C.A. G.R. No. 31618) which affirmed the RTC decision.[7] The Court of Appeals ruled that:

> "In their petition for review, the herein petitioners simply reiterates/repeats their above-mentioned argument that the lot occupied by Olan is not the lot "ordained or decreed to be delivered to respondents herein in the dispositive portion of the decision of the Municipal Trial Court of Los Baños, Laguna, which decision was affirmed in toto by the Regional Trial Court on appeal"[8]

Petitioner's Motion for Reconsideration was denied[9]. Hence this petition, wherein petitioners raise the following issues:

> I.
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> WHETHER OR NOT THE DECISION IN CIVIL CASE NO. 979 IN THE MUNICIPAL TRIAL COURT OF LOS BAÑOS, LAGUNA, HAS BECOME FINAL AND EXECUTORY.
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> II.
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> ASSUMING THAT THE DECISION IN CIVIL CASE NO. 979 HAS NOT ATTAINED FINALITY, WHETHER OR NOT PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISMISSING C.A. G.R. NO. 31618.
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> III.
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> AGAIN ASSUMING THAT THE DECISION IN CIVIL CASE NO. 979 HAS NOT ATTAINED FINALITY, WHETHER OR NOT PUBLIC RESPONDENT CAN BE COMPELLED TO ORDER A HEARING AND RECEIVE NEW EVIDENCE PURPORTING TO SHOW THAT THE PARCEL OF LAND UNDER QUESTION IS IN THE NAME OF PETITIONER JACINTO OLAN.[10]

Petitioners argue that the decision of the MTC in Civil Case No. 979 never attained finality. In support of this argument, petitioners claim that the dispositive portion of the MTC decision stated that the adjudication of the court was "without prejudice to whatever final action the Department of Natural Resources/Bureau of Lands may take on the pending sales application". Thus, the decision was incomplete since it left other matters to be done. Moreover, petitioners seek to compel the Court of Appeals through the Writ of Mandamus to receive into evidence a certification made by the Department of Environment and Natural Resources (DENR) to the effect that the lot possessed by petitioner OLAN is different from the lots decreed in the dispositive portion of the decision as newly discovered evidence.[11]

We resolve to deny the petition.

Petitioners fault the Court of Appeals for not admitting the certification made by the DENR as "newly discovered evidence" – to show that OLAN was not in possession of the lots in question i.e. Lot Nos. 3839 and 3842 but Lot No. 8253.[12]

We are not persuaded that the Court of Appeals committed any reversible error.

Sections 1 and 2, Rule 37 of the 1964 Rules of Court as amended[13] read:

> "SECTION 1. Grounds of and period for filing motion for new trial. – Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

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(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result;

(c) Award of excessive damages, or insufficiency of the evidence to justify the decision, or that the decision is against the law.

SEC. 2. Contents of motion for new trial and notice thereof. – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

When the motion is made for the causes mentioned in subdivisions, (a) and (b) of the preceding section, it shall be proved in the manner provided for proof of motions. Affidavit or affidavits of merit shall also be attached to a motion for the cause mentioned in subdivision (a) which may be rebutted with counter-affidavits. xxx"

Instead of filing a petition for review of the RTC decision affirming the MTC and a motion to quash the writ of execution issued by the RTC, merely attaching thereto the alleged "newly discovered evidence", petitioners should have filed a motion for new trial with the RTC on the ground of newly discovered evidence in accordance with the aforequoted Rule 37 of the 1964 Rules of Court. Petitioners failed to support their claim with affidavits to show compliance with the following requisites for newly discovered evidence as a ground for new trial: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted will probably change the judgment.[14]

Even assuming that petitioners complied with the above-mentioned requirements, we are not convinced that the certification in question is "newly discovered evidence". Petitioners did not prove that, even with the use reasonable diligence, they could not have obtained the certification during the trial. The fact that petitioners' request with the DENR to determine whether there was a relationship between Lot 3839 and 3842 with Lot 8253 was made only on April 13, 1993[15] or almost ten years after the decision of the MTC was rendered on May 18, 1992 shows that petitioners did not exercise reasonable diligence to obtain this evidence.

Neither can we sustain petitioners' contention that the decision in the ejectment case (Civil Case No. 979) never became final considering the statement in the MTC decision that it was "without prejudice to whatever final action the Department of Natural Resources/Bureau of Lands may take on the pending sales application". Petitioners themselves recognize and "do not question the correctness of the now final decision of the Municipal Trial Court of Los Baños, Laguna, in Ejectment Case No. 979",[16] but are objecting to the fact that the lot they are occupying is different from the lots, which lots as per aforesaid decision, they were required to vacate and to deliver to plaintiffs, as shown by the document from the DENR in their possession. However, the identity of the lots subject of the ejectment case was determined and finally settled by this Court in G. R. No. 112469, promulgated on January 17, 1994 which denied petitioners' petition for review of the Court of Appeal's decision denying petitioners' motion to quash the writ of execution on the ground that they failed to show why the actions of the three courts which have passed on the same issue should be reversed; that these courts' final factual findings are not based on substantial evidence; and that their decisions are contrary to applicable law and jurisprudence.[17]

Moreover, it bears stress that the adjudication of the Bureau of Lands on the sales application will determine the issue of ownership of the lots in question i.e. the determination of the respective rights of rival claimants to public lands or to cases which involve disposition of public lands.[18] On the other hand, the only issue for resolution in an ejectment case is physical or material possession of the property involved, independent of any claim of

ownership set forth by any of the party litigants.[19] The power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts.[20] A judgment rendered in an ejectment case shall not bar an action between the same parties respecting title to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession.[21]

Finally, it must be pointed out that the writ of mandamus is not the proper remedy to compel a court to grant a new trial on the ground of "newly discovered evidence". Mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use and not a discretionary duty. It is nonetheless likewise available to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either.[22]

WHEREFORE, the instant petition is hereby DENIED, and the appealed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] The petition was referred to as an "Original action for Certiorari and Mandamus" but the allegations in the petition reveal that is a Petition for Review under Rule 45.

[2] Former Twelfth Division composed of the ponente, J. Serafin V.C. Guingona; and the members, J. Antonio M. Martinez and J. Eubolo G. Verzola, concurring.

[3] Presided by Judge Romulo G. Garteciano

[4] MTC Decision, p. 27; Rollo, p. 70.

[5] Special First Division composed of the ponente, J. Jorge S. Imperial (Acting Chairman); and the members, J. Alicia Austria-Martinez and J. Angelina S. Gutierrez, concurring.

[6] Decision, C.A. G.R. No. 30812, August 30, 1993, pp. 5-6.

[7] Petition for Review, pp. 4-7; Rollo, pp. 10-13.

[8] Resolution, C.A. G.R. No. 31618, April 11, 1994 p. 4; Rollo, p. 34.

[9] Rollo, p. 43.

[10] Memorandum for Petitioners, p. 4; Rollo, p. 156.

[11] Memorandum for Petitioners, pp. 4-9, Rollo, pp. 156-161.

[12] Ibid., p. 7-9.

[13] The 1997 Rules on Civil Procedure was not yet in effect.

[14] CIR vs. A. Soriano Corporation, 267 SCRA 313 at 318 [1997]

[15] Rollo, p. 74.

[16] Petition for Review, p. 1; Rollo, p. 7.

[17] Petitioners' motions for reconsideration were likewise denied on March 9, 1994 and June 25, 1994.

[18] Painaga vs. Cortes, 202 SCRA 245 at 249 [1991].

[19] Gachon vs. Devera, Jr., 274 SCRA 540 at 552 [1997].

[20] Painaga vs. Cortes, Supra.

[21] Corpus vs. Court of Appeals, 274 SCRA 275 at pp. 280-281 [1997].

[22] Angchangco, Jr. vs. Ombudsman, 268 SCRA 301 at 306 [1997].

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