

RUFINO VALENCIA, PETITIONER, VS. HON. COURT OF APPEALS AND THE PEOPLE OF BO. STA. CRUZ, PAOMBONG, BULACAN, RESPONDENTS.

G.R. No. 119118. February 19, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review[1] seeks to annul and set aside the decision[2] dated October 28, 1994 of the Court of Appeals denying the petition for certiorari dated January 26, 1994 of the Regional Trial Court of Malolos, Bulacan, Branch 6. It also seeks to overturn the resolution of the CA dated February 10, 1995, denying petitioner's motion for reconsideration.[3]

The facts of this case are as follows:

On May 9, 1990, petitioner Rufino Valencia entered into a lease agreement with the Roman Catholic Bishop of Malolos (RCBM) involving a fishpond, registered in the latter's name under Original Certificate of Title No. 589. He paid RCBM P300,000.00 as rental of the fishpond for 1990-1991 and thereafter invested P1,575,000.00 for the milkfish fingerlings to be grown in the pond.

On May 31, 1990, the people of Barrio Sta. Cruz, Paombong, herein private respondents, filed a complaint against RCBM, Cirilo R. Almario and Miguel Paez, with the Regional Trial Court of Malolos, Bulacan, for declaration of nullity of OCT No. 589. Private respondents alleged that they were the true owners of the fishpond and that RCBM was a mere trustee. They prayed for the issuance of an injunction to prevent RCBM from leasing the fishpond or in case it had already been leased, from implementing the lease.

In an order dated June 26, 1990, presiding Judge D. Roy A. Masadao, Jr., issued a resolution enjoining RCBM and co-defendants as well as all persons claiming under them from leasing the fishpond or from implementing the lease subject to the right of whoever sowed fish to remain in possession and management of the fishpond.

In an order dated September 10, 1990, Judge Masadao allowed private respondents' lessee, Rodrigo Bagtas, to operate the fishpond, on the condition that the court shall supervise the sowing and harvesting of fish, that Bagtas shall pay the rentals directly to the clerk of court who will deposit the same in a bank for a later disposition, and that the court can terminate the operation anytime.

Dispossessed, petitioner intervened in the case. He filed an answer in intervention with a counterclaim for P1,575,000.00 plus damages. He also moved to set aside the September 10, 1990 order. The motion was granted by Judge Masadao. Private respondents then moved for a reconsideration, but their motion was denied.

Bagtas' operation of the fishpond was terminated on January 4, 1991. However, he begged for leave of court to intervene and moved to reconsider the termination. This was granted and he reacquired the authority to operate the fishpond on March 12, 1991.

After presentation of evidence and submission of the case for decision, Judge Masadao dismissed it *motu proprio* in an order dated April 21, 1993 for lack of jurisdiction, opining that the case was within the exclusive jurisdiction of the Agrarian Reform Adjudication Board. Both parties moved to reconsider, which Judge Masadao granted, and the case was scheduled anew for pre-trial on June 29, 1993. Petitioner was not informed thereof, hence he failed to attend the pre-trial. On that day, Judge Masadao issued an order stating that the parties adopted the evidence already presented and considered the case submitted for decision. Petitioner's former counsel received a copy of the order but failed to inform petitioner.

On July 5, 1993, Judge Masadao rendered judgment upholding the validity of RCBM's title and its lease contract with petitioner.[4] However, he dismissed petitioner's counterclaim for lack of evidence.

Upon belatedly learning of said judgment, petitioner moved for execution pending appeal, contending that since the trial court found him entitled to possession of the fishpond, it is unfair to deprive him thereof.[5] Meanwhile, he filed a petition for relief from the portion of the judgment dismissing his counterclaim, where he alleged that his failure to move for reconsideration of or appeal from said judgment was due to a mistaken belief of his former counsel that he was no longer interested to pursue the counterclaim.[6]

The case was re-raffled to Branch 6 presided by Judge Ildefonso E. Gascon. Judge Masadao inhibited himself from the case due to the administrative complaint filed against him by petitioner.

Private respondents then submitted their respective comments/ opposition to the motion for execution pending appeal and to the petition for relief from judgment.

On January 26, 1994, Judge Gascon denied the motion for execution and deferred action on the petition for relief. He found the motion bereft of cogent and good reasons under Sec. 2, Rule 39,[7] of the Rules of Court, because the portion of the decision aimed to be executed had been vacated by private respondents' appeal. Further, he found there were no special circumstances that justify urgency in the execution of the judgment, and which could outweigh the injury or damage in case of reversal of judgment.

The trial court also said that a grant of the petition for relief during the pendency of the appeal would pre-empt the appellate court's ruling in case private respondents would appeal. The court added that they were entitled to have their appeal given due course, otherwise, the grant of the petition might bring incalculable harm to them.[8]

On June 30, 1994 petitioner filed with the Court of Appeals a petition for certiorari and mandamus. He contended that it was grave abuse of discretion for the trial court to deny his motion for execution pending appeal and to defer action on his petition for relief. He further claimed that the portion of the judgment dismissing his counterclaim was null and void for lack of due process.[9]

In their Comment, private respondents averred that the trial court did not abuse its discretion in denying the motion to execute pending appeal and deferring its action on the petition for relief. They claimed petitioner was forum-shopping when he filed a complaint for annulment of judgment. They insisted that the trial court's dismissal of the counterclaim was correct.[10]

On October 28, 1994, the Court of Appeals promulgated its decision dismissing the petition for certiorari and mandamus. It held that the trial court did not abuse its discretion in denying the motion for execution pending appeal. According to the appellate court, it is clear from Section 2 Rule 39 of the Rules of Court that it is discretionary for the trial court to grant or deny a motion for execution. Thus, it cannot be compelled to allow execution, after finding that there was no cogent and good reason for it.

Further, the CA said a reading of the trial court's order revealed that the denial of the motion is anchored on both

law and jurisprudence, which hardly indicated grave abuse of discretion. The appellate court concluded that there was nothing capricious or whimsical in the trial court's decision to defer action on the petition for relief on the ground that it would pre-empt the ruling of the Court of Appeals. Lastly, since the petition for relief remained to be resolved by the trial court, the Court of Appeals did not deem it appropriate to pass upon the issue of whether the dismissal of petitioner's counterclaim was a violation of his right to due process.[11]

Petitioner's motion for reconsideration was denied by the CA for being pro forma. The CA concluded that his complaint for annulment of a portion of the RTC judgment was a form of forum-shopping.[12]

Hence, this petition for review. Petitioner now avers that the Court of Appeals erred in:

I

...HOLDING THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PETITIONER'S MOTION FOR EXECUTION PENDING APPEAL.

II

...REFUSING TO COMPEL THE TRIAL COURT TO ACT ON PETITIONER'S PETITION FOR RELIEF FROM A PORTION OF THE JUDGMENT OF THE TRIAL COURT ONE WAY OR ANOTHER.

III

...FAILING TO ANNUL THAT PORTION OF THE JUDGMENT OF THE TRIAL COURT DISMISSING PETITIONER'S COUNTERCLAIM FOR LACK OF DUE PROCESS.

IV

...HOLDING THAT PETITIONER'S MOTION FOR RECONSIDERATION IS PRO FORMA.

V

...HOLDING THAT PETITIONER'S COMPLAINT FOR ANNULMENT OF JUDGMENT IS IN LEGAL CONTEMPLATION, FORUM SHOPPING FOR THE REASON THAT AFTER FAILING TO OBTAIN A FAVORABLE RESULT IN HIS PETITION FOR RELIEF FROM JUDGMENT, PETITIONER WENT TO THE COURT OF APPEALS WITH VIRTUALLY THE SAME PRAYER.[13]

Notwithstanding the five assigned errors, we find that four issues merit our consideration. We need not delve on the issue of the motion for reconsideration. It is now moot and academic. The issues we shall pass upon are:

1) Was private respondents' appeal already perfected when petitioner filed a motion for execution?

2)

Is the trial court's duty spelled out in Rule 38 of the Rules of Court, except Sections 4 & 6 thereof, purely ministerial?

3)

Was there forum-shopping when petitioner filed a complaint for annulment of judgment with the Court of Appeals?

4) Should execution pending appeal be allowed?

First, petitioner avers that the trial court abused its discretion when it denied the motion on the ground that the portion of the decision sought to be executed had been vacated by private respondents' timely appeal. Petitioner avers that he received the trial court's decision on July 23, 1993, and he filed the motion on August 5, 1993, well within the 15-day period for appeal. Private respondents do not dispute these averments.

Section 23 of "E. Appellate Jurisdiction" in the Interim Rules and Guidelines Implementing Batas Pambansa Blg. 129 provides that perfection of an appeal shall be upon the expiration of the last day to appeal by any party.[14] Moreover, the mere filing of a notice of appeal does not automatically divest the trial court of its jurisdiction over the case.[15] The trial court can take cognizance of the motion for execution pending appeal if filed within 15 days from the party's notice of the decision.[16] In this case, however, the trial court's jurisdiction was interrupted and lost when an appeal was filed by private respondents. Accordingly, the Court of Appeals did not find any abuse of discretion by the trial court's holding to the effect that the judgment would be deemed in abeyance or vacated because of private respondents' timely appeal.

Second, should the trial court have allowed the petition for relief? Petitioner alleges that the Court of Appeals erred in refusing to compel the trial court to act on the petition for relief. According to him, the trial court's duty under Rule 38 of the Rules of Court,[17] except sections 4 & 6 thereof, is ministerial such that upon finding the petition sufficient in form and substance, the judge must order the other party to answer, conduct a hearing and decide whether to grant or deny the petition. The judge was therefore remiss in his duty when he deferred action on the petition, since his only role was either to dismiss or grant it, according to petitioner.

Private respondents argue that the trial court was correct in deferring action on the petition for relief, in the interest of justice and equity. To grant the petition pending private respondents' appeal, they aver, would pre-empt the Court of Appeals. This, they say, is not abuse of discretion amounting to lack of jurisdiction.

We find no merit in petitioner's argument. A petition for relief under Rule 38 is only available against a final and executory judgment.[18] In this case, the trial court's judgment subject of the petition for relief has not yet attained finality because of the timely appeal by private respondents. Therefore, petitioner cannot require the judge to follow the procedure laid down in Rule 38. The judge did not err nor abuse his discretion when he deferred action on the petition.

Corollarily, the Court of Appeals did not err in failing to annul the portion of the trial court's judgment dismissing petitioner's counterclaim for lack of due process. This can well be settled in the petition for relief before the trial court. Section 1, Rule 47 of the Rules of Court[19] provides that parties can avail of the action for annulment of judgment when a petition for relief is no longer available through no fault of the petitioner. In the present case, the latter remedy was still available.

On the issue of forum-shopping, the rule is, there is forum-shopping when as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another[20] and that the actions that were filed involve the same transactions and the same essential facts and circumstances.[21] There must also be identical causes of action, subject matter and issues in the cases before the two fora.

The petition for relief in the trial court and the petition for annulment of judgment in the Court of Appeals emanate from the same transaction, which is the lease contract between petitioner and the Roman Catholic Bishop of Malolos (RCBM). They also involve the same facts and circumstances. Recall that upon the execution of the aforesaid contract, petitioner occupied the fishpond where he invested considerable amount of money. When private respondents filed their complaint for cancellation of RCBM's title over the fishpond, its possession was removed from petitioner, who consequently filed an answer in intervention, with counterclaim for the damages he incurred. The trial court disposed the complaint upholding the RCBM's title. However, the same court dismissed petitioner's counterclaim. As petitioner failed to move for reconsideration or appeal the portion of the decision adverse to him, he filed the petition for relief with the trial court, which in turn deferred action thereto. Consequently, petitioner filed the petition for certiorari with annulment of judgment with the Court of Appeals. Clearly, the two actions resulted from the same facts and circumstances. The two petitions also involve identical

cause of action. Both were for the setting aside or annulment of that portion of the trial court's judgment dismissing petitioner's counterclaim on the ground of fraud. The two petitions also involve the same subject matter or issue of whether petitioner has meritorious counterclaim which, for alleged lack of notice for the pre-trial conference, he failed to prove. Clearly, there is forum-shopping and the Court of Appeals did not err when it declared so in its February 10, 1995 resolution.

Finally, should a writ of execution pending appeal be allowed? Section 2, Rule 39 of the Rules of Court, provides that upon motion, the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. Petitioner, citing *Echaz vs. CA, et al.*, 199 SCRA 381, 386 (1991), states that generally, execution is allowed when superior circumstances demanding urgency outweigh the damages that may result from the issuance of the writ. Consequently, petitioner says that a writ of execution should be issued in his favor not only because he is entitled, under the law, to the possession of the fishpond, such that he can take possession of the same without a writ of execution, but also because the issuance of such writ will prevent a bloody confrontation between the parties.

Private respondents respond that the trial court did not abuse its discretion since appreciation of the reasons for execution pending appeal lies within its sound discretion.

We agree with private respondents. Other than his self-serving claim that he would suffer damage with private respondents' continued possession of the fishpond, petitioner offered no convincing proof. His insistence - that the trial court's decision upholding the lease agreement between him and RCBM already entitled him to possession of the fishponds even without a writ and despite appeal - is premature. It is not enough for him to claim he needed a writ of execution without detailing cogent and good reasons therefor. The trial court was within its bounds when it considered his imagined fears of a bloody confrontation not enough reason to issue the writ.

On the prayer for a writ of preliminary injunction, there are three requisites for the grant of the same: 1) The invasion of the right is material and substantial; 2) The right of complainant is clear and unmistakable; 3) There is an urgent and paramount necessity for the writ to prevent serious damage.[22] Petitioner merely alleged the presence of these elements, but did not substantiate the same with convincing evidence. Consequently, we find no meritorious reason for the issuance of said writ.

WHEREFORE, the petition is DENIED. The decision and resolution of the Court of Appeals dated October 28, 1994 and February 10, 1995, respectively, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 8-44.

[2] *Id.* at 161-167.

[3] *Id.* at 183-185.

[4] *Id.* at 45-57.

[5] *Id.* at 94-96.

[6] *Id.* at 98-103.

[7] Rule 39, Sec. 2. Discretionary execution. -

a) Execution of a judgment or final order pending appeal. - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

b) Execution of several, separate or partial judgments. - A several, separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

[8] Rollo, pp. 121-122.

[9] CA Records, pp. 1-23.

[10] Id. at 70-86.

[11] Rollo, pp. 161-167.

[12] Id. at 183-185.

[13] Id. at 15-16.

[14] E. APPELLATE JURISDICTION

23. Perfection of appeal. - In cases where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party.

In cases where a record on appeal is required the appeal is perfected upon approval thereof by the court which should be done within ten (10) days.

[15] Cebu Contractors vs. CA, et al., 216 SCRA 597, 601 (1992).

[16] Sonida Industries Co., Inc. vs Wasan, Sr., 179 SCRA 763, 768 (1989).

[17] Section 1. Petition for relief from judgment, order, or other proceedings.-When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

Sec. 2. Petition for relief from denial of appeal. - When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

Sec. 3. Time for filing petition; contents and verification.- A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

x x x

Sec. 5. Preliminary injunction pending proceedings. - The court in which the petition is filed, may grant such

preliminary injunction as may be necessary for the preservation of the rights of the parties, upon the filing by the petitioner of a bond in favor of the adverse party, conditioned that if the petition is dismissed or the petitioner fails on the trial of the case upon its merits, he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction or the other proceedings following the petition; but such injunction shall not operate to discharge or extinguish any lien which the adverse party may have acquired upon the property of the petitioner.

x x x

Sec. 7. Procedure where the denial of an appeal is set aside. - Where the denial of an appeal is set aside, the lower court shall be required to give due course to the appeal and to elevate the record of the appealed case as if a timely and proper appeal had been made.

[18] O. Herrera. Remedial Law, Volume VII, Comments on the 1997 Rules of Civil Procedure as Amended, p. 318 (1997), citing *Bernabe vs. Court of Appeals*, 19 SCRA 679 (1967).

[19] Rule 47, Section 1 Coverage. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

[20] *Government Service Insurance System vs. Sandiganbayan*, 191 SCRA 655, 660 (1990).

[21] *Professional Regulation Commission (PRC) vs. CA, et al.*, 292 SCRA 155, 164 (1998).

[22] *Syndicated Media Access Corporation vs. CA*, 219 SCRA 794, 797 (1993).

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