

MARCELO L. ONGSITCO, DECEASED, REPRESENTED BY HIS HEIRS, NAMELY, JOSEPH, JUNE WIN, FRANKLIN, IMELDA, ALL SURNAMED ONGSITCO, JOSEPHINE ONGSITCO-SY, AND MARITES ONGSITCO-DUMALAON,...

G.R. No. 121527. March 29, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The well-settled rule that certiorari is not a substitute for a lost appeal (or, more accurately, a petition for review in ejectment cases) is reiterated in resolving this petition under Rule 45 seeking to set aside the Decision[1] of the Court of Appeals[2] promulgated on June 9, 1995 in CA-G.R. SP No. 37033 and the Resolution denying the Motion for Reconsideration.[3]

The Facts

The petition alleges that Marcelo L. Ongsitco was the lessee of a property identified as 2044 Velasquez, Tondo, Manila from its "original owner," Catalino Luciano. The land was foreclosed by China Banking Corporation for failure of Luciano to pay his loan. The property was subsequently purchased from the bank by herein private respondent United Plaza Realty Corporation (United). No written contract of lease was executed between Ongsitco and United.

For failure to pay rentals and other grounds, United filed an ejectment suit against Ongsitco before the Metropolitan Trial Court of Manila[4] docketed as Civil Case No. 13741 I-CV. After trial, judgment[5] was rendered with the following disposition:

"WHEREFORE, judgment is hereby rendered for the PLAINTIFF. The defendant and all persons claiming under him are hereby -

(a) ORDERED to VACATE the premises commonly known as 2044 Velasquez Street, Tondo, Manila and surrender its possession to the plaintiff;

(b) ORDERED to PAY the plaintiff, the following amounts:

1. P640,000.00 as unpaid rent from October 1982 to August 1991 inclusive;
2. P27,000.00 per month from September 1991 and every month thereafter until the premises is completely vacated, as fair rental value for the use and occupancy thereof;
3. P10,000.00 for and as attorney's fees; and,
4. The costs of suit."

On the appeal of petitioner, a decision[6] dated September 2, 1994 was issued by the Regional Trial Court of Manila,[7] Branch 40, affirming the lower court, except as to the amount of monthly rental, which was reduced,

thusly:

"From the foregoing, the judgment of the lower court is hereby modified as follows:

"Defendant Marcelo L. Ongsitco and all persons claiming under him are hereby;

a. ordered to vacate the premises commonly known as 2044 Velasquez St., Tondo, Manila, and surrender his possession to the plaintiff;

b. ordered to pay the plaintiff the following amounts:

(1) P640,000.00 as rentals from October 1982

to August 1991;

(2) to pay monthly rental of P6,000.00 thereafter until the premises is completely vacated;

(3) P10,000.00 for and as attorney's fees; and

(4) the costs of this suit."

Thereafter, petitioners filed on April 18, 1995 (which is way beyond the 15-day reglementary period for petitions for review) in the respondent appellate court a "Petition for Certiorari, Prohibition and Mandamus" docketed as CA-G.R. No. 37033. Subsequent to the filing of the petition, counsel for petitioner filed a "Motion for Substitution of Heirs," petitioner Ongsitco having died on April 14, 1995. In its comment before the respondent Court, private respondent "submitted that while the petition itself is dated April 10, 1995, the Certification of the supposed affiant (petitioner in this case) and the subscription (sic) thereof appears to be dated April 18, 1995 or four days after the petitioner Marcelo Ongsitco died/passed away." [8]

In the assailed Decision with the following disposition.

"IN VIEW OF ALL THE FOREGOING, the petition at bench is DENIED DUE COURSE and is ordered dismissed."

respondent Court held (1) that with the death of Ongsitco, "the lease in his favor is legally terminated and his heirs do not have any colorable right to occupy the apartment thereafter"; and (2) the RTC decision has become final since no appeal was taken by petitioner and "certiorari will not lie as a substitute for the lost remedy of appeal."

The Issues

The instant petition before this Court raises the following "assignment of errors": [9]

"Respondent Court of Appeals erred in not applying to the case at bar but instead misappreciated the doctrine enunciated in *Fausta Dimaculangan vs. Intermediate Appellate Court* (170 SCRA 393) when it held that with the death of lessee Marcelo L. Ongsitco, the lease becomes legally terminated and his heirs do not have any colorable right to occupy the leased premises, considering that the doctrine held in said case is that a leasehold right is clearly inheritable.

"In holding that certiorari cannot be taken as a substitute for a lost appeal, respondent Court of Appeals erred in refusing to apply the exceptions to the said rule which are applicable to this case and considering the environmental circumstances of the case.

"Respondent Court of Appeals erred in holding that the gross negligence of petitioner Ongsitco's former counsel in pursuing the wrong mode of appeal which prevented him from recovering the substantial, valuable improvements worth P5 Million does not fall under the exceptions to the general rule.

"Respondent Court of Appeals erred in holding that the deceased Marcelo L. Ongsitco was not entitled to

recover the P5 Million expense incurred by the deceased petitioner Marcelo Ongsitco for the substantial and valuable improvements he introduced on the leased premises in good faith, the non-recovery of which would amount to unjust enrichment on the part of the private respondent corporation."

In its Comment, United traversed all the above alleged "errors."

The ultimate issue in this case can really be summed up as follows: -

Did the respondent Court commit a reversible error in dismissing the petition on the ground that "certiorari will not lie as a substitute for the lost remedy of appeal"?

The other alleged "errors" attributed by petitioner against the Court of Appeals, particularly the effect of the "gross negligence of petitioner Ongsitco's former counsel," the claim for recovery of P5 Million worth of improvements and the transmissibility of leasehold rights will be taken up in connection with the disposition of said main issue.

The Court's Ruling

It is not disputed that petitioner Ongsitco did not file a petition for review in the Court of Appeals. What he filed was a petition for certiorari, prohibition and mandamus. Ruling on this point, respondent Court held:

"Moreover, this petition virtually seeks to review the modified decision rendered by the respondent court in Civil Case No. 94-69374 dated September 2, 1994 (Annex B, Petition) by reinstating the wrong mode of appeal taken by the petitioner in the said case. Apparently, said decision had already attained finality as a result of the mistake committed in taking the proper appeal. Under the pretext of a certiorari proceeding against the order remanding the case to the Metropolitan Trial Court for possible execution, petitioner hopes to attain what could no longer be achieved because of a lost appeal. Well entrenched is the rule that a client is bound by the negligence and mistake of his counsel (*Ilasco, Jr. vs. CA*, 228 SCRA 413 [1993]) who is duty bound by law to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may as well be fatal to his client's cause (*Supreme Court Circular No. 2-90*). In effect, a wrong or inappropriate mode of appeal is inefficacious and should be dismissed (*Circular No. 2-90, supra*).

"As a logical consequence, petitioner cannot seek refuge in this proceeding because of the time-honored jurisprudential doctrine that certiorari will not lie as a substitute for the lost remedy (of) appeal (*Sy vs. Romero*, 214 SCRA 187; *Salas vs. Castro*, 216 SCRA 198; *Antonio vs. IAC*, 216 SCRA 214 [1992])."

We agree with the above holding. Countless times in the past, this Court has held that "where appeal is the proper remedy, certiorari will not lie.¹⁰ The writs of certiorari and prohibition are remedies to correct lack or excess of jurisdiction or grave abuse of discretion equivalent to lack of jurisdiction committed by a lower court."¹¹ "Where the proper remedy is appeal, the action for certiorari will not be entertained. x x x Certiorari is not a remedy for errors of judgment. Errors of judgment are correctible by appeal, errors of jurisdiction are reviewable by certiorari."¹²

Rule 65 is very clear. The extraordinary remedies of certiorari, prohibition and mandamus are available only when "there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law x x x." That is why they are referred to as "extraordinary." In the instant case, there is no question that the Regional Trial Court of Manila has rendered a final judgment where the remedy of the aggrieved party (Ongsitco) was a petition for review - which clearly was available to him but which he did not take advantage of. Even petitioner admits this, but he faults his former counsel for "negligence, gross ignorance and dereliction of duty," and otherwise insists that his case falls among the "exceptions to the general rule."

We carefully pored over the submissions of petitioner, particularly the Petition and the Reply but we are not convinced that the respondent Court committed any reversible error in considering counsel's mistake as binding

on the petitioner himself (or his successors in interest for that matter). Since petitioner alleges an error of the Court of Appeals, he has the burden of showing such error. And he has miserably failed to do so. Indeed, to agree with him would open the door to improvident petitions all anchored upon "mistake of counsel." And the concept of finality of judgments and stability of judicial doctrines would be swept away needlessly.

Petitioner also contends that respondent Court erred "in holding that the deceased Marcelo Ongsitco was not entitled to recover the P5 million expense x x x for the substantial and valuable improvements introduced in the leased premises x x x."

We see no error in the respondent Court's ruling. It taking up the question in its Resolution promulgated on August 17, 1995 denying the motion for reconsideration, respondent Court said:

"The lower court's decision stated that petitioner was unable to establish that he introduced the claimed improvement. But, granting for argument's sake, that he really did, he will not be entitled for the reimbursements thereof simply because he is merely a lessee of the land and as such, is not a builder/possessor in good faith.

Substantially, there is no error in the foregoing holding. A lessee cannot be considered as a builder in good faith because he knows or should know he is not the owner of the property where he builds.

"Good faith consists in the belief of the builder that the land he is building on is his and his ignorance of any defect or flaw in his title." [13]

Be that as it may, petitioners should really have no reason to complain against respondent Court, which went out of its way to make the above ruling. Inasmuch as the above error attributed to it was not jurisdictional in nature, but in fact merely an alleged error of judgment correctible in a petition for review and not in a petition for certiorari, respondent Court could have refused to pass upon it in view of the limited extent of its power under the extraordinary remedy of certiorari.

The petitioner tenaciously argues that the respondent Court erred in holding "that leasehold right is not inheritable." Again, the resolution of this issue - like petitioner's claim of reimbursement - is really not necessary in the ultimate disposition of this case. The stubborn fact is that the decision of the regional trial court has become final, no petition for review [14] therefrom having been perfected within the reglementary period and certiorari not being a valid substitute therefor. Hence, the question of whether a "leasehold right is inheritable or not" or whether the heirs of Ongsitco could be substituted in his place as petitioners in the proceedings in the Court of Appeals is an academic question and will thus not be passed upon in this Decision.

WHEREFORE, the petition is DENIED DUE COURSE for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 52-55.

[2] Special Seventh Division composed of J. Conrado M. Vasquez, Jr., ponente; JJ. Emeterio C. Cui, chairman and Delilah Vidallon Magtolis, member.

[3] Rollo, pp. 56-60.

[4] Presided over by Judge Ernesto A. Reyes.

[5] Rollo, pp. 61-73.

[6] Rollo, pp. 75-78.

[7] Presided over by Judge Felipe G. Pacquing.

[8] Rollo, p. 137.

[9] Rollo, p. 22.

[10] Mondoñedo vs. Court of Appeals, G.R. No. 113349 (January 18, 1996).

[11] Cf. Rule 65, Sections 1 & 2.

[12] Regalado, Remedial Law Compendium, Vol. 1, 1988 ed.

[13] Pleasantville Development Corporation vs. Court of Appeals, G.R. No. 79688, February 1, 1996, citing Floreza vs. Evangelista, 96 SCRA 130.

[14] Supreme Court Circular No. 2-90, item 3, "Appeals to the (Court of Appeals) from Regional Trial Courts may be taken: x x x (b)

by petition for review - where the judgment was rendered by the regional trial court in the exercise of its appellate jurisdiction."

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