

**JOSE A. LINZAG AND THE HEIRS OF CRISTOBAL A. LINZAG,
PETITIONERS, VS. COURT OF APPEALS, THE PRESIDING JUDGE,
REGIONAL TRIAL COURT, BRANCH IV, MATI, DAVAO ORIENTAL,
PATRICIO S. C...**

G.R. No. 122181. June 26, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

May a party aggrieved by a judgment of a cadastral court and who subsequently obtains an unfavorable judgment in an action to annul the original certificate of title issued pursuant to the former, and then loses both in the Court of Appeals and in this Court in the appeal from the latter, be allowed to file with the Court of Appeals an action to annul the judgment of the cadastral court? The Court of Appeals resolved the issue in the negative on the ground of *res judicata*. Hence, this special civil action of *certiorari*.

We affirm the Court of Appeals not only because of absence of grave abuse of discretion, but likewise because an action for annulment of judgment was no longer available. Moreover, the instant special action was not the proper remedy against the challenged decision of the Court of Appeals.

As gathered from the decisions of the trial court and the Court of Appeals and the pleadings of the parties, the following are the material facts in this case:

Petitioners Jose A. Linzag and the heirs of Cristobal A. Linzag are members of the non-Christian tribe known as the Kalagan tribe of Mati, Davao Oriental. Jose and Cristobal claim to have inherited from their deceased parents, Datu Joaquin Linzag and Regina Agustino, a parcel of land, otherwise known as Waniban Island, designated as Lot No. 1222 of the Mati Cadastre, with an area of 36,575 square meters, more or less.[1]

At the cadastral proceeding (CAD CASE No. N-16, LRC Cad. Record N-326) involving Lot No. 1222 before the then Court of First Instance of Davao Oriental sitting in Mati, Davao Oriental, Cristobal Linzag filed his claim over said Lot. Another claimant, one Patricio Cunanan, likewise filed a claim.

On 26 July 1971, one Orlando L. Salvador filed a motion[2] to award Lot No. 1222, as an uncontested lot, in his favor. He alleged therein that he had acquired the rights of Patricio Cunanan for sufficient consideration and that the other claimant, Cristobal Linzag, had withdrawn his answer/claim in favor of Patricio Cunanan and/or his successors-in-interest, thereby making said lot as a “non-contested lot.” At the hearing of the motion, which was not opposed by the Director of Lands, then represented by the Office of the Provincial Fiscal, Salvador offered in evidence the following: (a) a “Deed of Absolute Sale of Hereditary Rights Over an Unregistered Land” covering Lot No. 1222 executed on 29 December 1970[3] by Patricio S. Cunanan, Avelina C. Salazar, Elena C. Abayari, Igualdad Cunanan, Diosdado Cunanan, Lakandula Cunanan, Josefina C. Sibala as vendors and Orlando L. Salvador as vendee; and (b) a verified “Withdrawal of Claim/Answer” dated 13 July 1971[4] signed by Cristobal and Jose Linzag and executed in favor of Patricio Cunanan and/or his successor’s-in-interests.

On 10 August 1971, the cadastral court, on the basis of the foregoing, issued an Order[5] declaring that Salvador and his predecessors-in-interests had been in peaceful, open, continuous, exclusive and adverse possession of Lot No. 1222, in concept of an owner for a period of at least 30 years; that Salvador was the successor-in-interest of original claimant Patricio S. Cunanan; and that the lot was a non-contested lot. The court thus decreed:

WHEREFORE, PREMISES CONSIDERED, this Court hereby adjudicates Lot No. 1222, together with all its improvements thereon, in favor of:

ORLANDO L. SALVADOR, of legal age, Filipino, married to Jovita B. Ramos-Salvador, a resident of Parañaque, Rizal.

The Land Registration Commissioner is hereby directed to issue the corresponding decree of registration for said Lot No. 1222, as soon as this Order becomes final and executory.

After the Order became final, the cadastral court issued an Order[6] directing issuance of the decree of registration.

In due time, Decree No. N-137262 was issued. Then on 13 October 1971, pursuant to said Decree, Original Certificate of Title (OCT) No. O-2039[7] covering Lot No. 1222 was issued in the name of Orlando L. Salvador.

On 4 February 1977, petitioners herein filed an action for annulment of title and reconveyance with damages[8] against private respondents Patricio Cunanan and Orlando Salvador before the Court of First instance of Mati, Davao Oriental (docketed as Civil Case No. 571).

On 10 June 1977, petitioners filed an amended complaint[9] wherein they alleged, inter alia, that they and their predecessors-in-interests had been in actual, lawful, peaceful, public, adverse and uninterrupted possession and occupation of the land since the Spanish regime up to the present; the lot was ancestral land of the Linzags; the lot had been included in a prior land registration case filed by Patricio Cunanan which was decided against him, with the land registration court holding that the land was “part of the public domain,” which decision was affirmed by the Court of Appeals on 19 November 1960 in CA-G.R. No. 19594-B; that in the cadastral proceedings, specifically on 13 July 1971 and after the effectivity of said decision of the Court of Appeals, Patricio Cunanan, with the aid and participation of his son-in-law, Atty. Galileo Sibala, procured, through fraud, the signatures of Jose and Cristobal Linzag on a document which turned out to be a withdrawal of their claim to Lot No. 1222 by representing to them that it was a deed of mortgage over the lot in consideration of P3,000.00; and thereafter, Cunanan, together with the heirs of his deceased wife, sold the lot to Orlando Salvador for the sum of P25,000.00. Petitioners further alleged that both the withdrawal of claim and deed of absolute sale were notarized by Atty. Sibala; on the basis of the deed of sale in his favor, Salvador filed a motion with the cadastral court to adjudicate the lot in his favor as an uncontested lot; that the cadastral court granted the motion and as a consequence thereof, OCT No. O-2039 was issued in Salvador’s name; and that it was only on 14 May 1974 that petitioners discovered the fraud. They then prayed for judgment directing the Register of Deeds of Davao Oriental to issue a certificate of title in petitioners’ names, and ordering defendants to pay moral and exemplary damages, attorney’s fees and transportation expenses.

In its decision[10] dated 14 February 1984, the trial court dismissed Civil Case No. 571 because the “action [was] improper and that the claim of plaintiffs have not been duly substantiated by them.” The court likewise ruled that plaintiffs therein were not the true owners of the property; plaintiffs failed to prove extrinsic fraud; there was no evidence that Salvador was a buyer in bad faith; and that the action was filed beyond the prescriptive period.

Petitioners appealed the above decision to the Court of Appeals (Eighth Division) in CA-G.R. CV No. 03329. In its decision[11] of 25 July 1989, the Court of Appeals dismissed the appeal on the ground of prescription.

Petitioners thereafter appealed to this Court by way of a petition for review, which was docketed as G.R. No. 89441. In the resolution[12] of 2 October 1989, this Court (First Division) denied the petition “for late filing” and decreed that the judgment sought to be reviewed “has now become final and executory.”

Meanwhile, on 9 November 1993, Original Certificate of Title No. O-2039 was cancelled and the Registry of Deeds for the Province of Davao Oriental issued a Transfer Certificate of Title No. T-16604[13] in the name of Manuel P. Blanco, Jr. and Jose Manuel Serrano.

Undaunted by the foregoing adverse events, on 5 December 1994, petitioners filed with the Court of Appeals, a petition[14] for the annulment of judgment of the then Court of First Instance of Mati, Davao Oriental in CAD. CASE No. N-16, LRC Cad. Record No. N-326 concerning Lot No. 1222 (docketed as CA-G.R. SP No. 35877). Impleaded as respondents were the presiding judge of the Regional Trial Court of Mati, Davao Oriental, which succeeded the former Court of First Instance that decided the cadastral case, herein private respondents Patricio Cunanan, Orlando Salvador, Manuel Blanco, Jr., Jose Manuel Serrano and the Register of Deeds of Davao Oriental.

In its decision[15] of 28 February 1995, public respondent Court of Appeals dismissed the petition for being barred by the judgment in Civil Case No. 571, i.e., on ground of *res judicata*. The appellate court’s extensive discussion[16] on this issue deserves to be quoted, thus:

On the issue of *res judicata*, the private respondent point [sic] to the decision of the Court of First Instance of Davao Oriental in Civil Case 571 affirmed by this Court in CA G.R. CV. 03329. It was argued that this previous case involved the same parties, subject matter and cause of action as this instant petition, and is, therefore, a bar to this petition.

An action is barred by a former judgment if (1) the former judgment is final; (2) the court which rendered it has jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; (4) there must be, between the first and the second actions, identity of parties, subject matter and causes of action.

An examination of the records show [sic] that the first three requirements for the application of the doctrine of *res judicata* are present in this case.

The petitioners themselves related in their petition that they had instituted a complaint for annulment of title and reconveyance with damages against the private respondents, Salvador and Cunanan. The complaint was dated 10 June 1977 and was docketed as Civil Case No. 571 of the then Court of First Instance of Davao Oriental.

On 14 February 1984, the Court of First Instance rendered judgment against the petitioners dismissing their complaint and ordering them to pay Orlando Salvador P5,000.00 and Patricio Cunanan, P2,000.00 by way of litigation expenses and attorney’s fees (see Decision, Annex “J”, Petition; Rollo, pp. 50-68).

The judgment was affirmed by this Court in CA G.R. No. 03329 (“Jose A. Linzag, et. [sic] al. vs. Patricio Cunan, et. [sic] al.”) in a decision rendered on 25 July 1989 (see copy of Decision; Annex “K”, Petition; Rollo, pp. 69-74).

The petition for review with the Supreme Court was not filed within the extension period granted to the petitioners. Thus, on 2 October 1989 the Supreme Court issued a Resolution stating that no appeal was taken on time by the petitioners and the judgment had already become final and executory (Annex “L”, Petition; Rollo, p. 75).

The judgment in Civil Case 571 (i.e., the annulment case) having already become final as pronounced in the Supreme Court Resolution, the first requirement for the application of *res judicata* is, therefore, present.

The Court of First Instance of Davao Oriental undoubtedly has jurisdiction over the subject matter of the case. The parcel of land in question is located within the province and as such, lies within the territorial jurisdiction of said court. No question on the jurisdiction of the trial court over the parties appears to have been raised.

The judgment was on the merits as it was rendered after a determination of which party is right and was not merely based on a preliminary or technical issue (see Santos vs. Intermediate Appellate Court, 145 SCRA 238, 245-246). A reading of the decision of the trial court shows that it was based on matters of substance and not merely on technical points.

There is also an identity between the parties in this petition and that in Civil Case 571. The petitioners in this case, Jose Linzag and the Heirs of Cristobal Linzag are likewise the plaintiffs in Civil Case 571. The defendants in Civil Case 571 are also the private respondents in this case. The inclusion of Manuel Serrano and Jose Manuel Blanco as private respondents does not affect the identity of the parties as these two are successors-in-interest of original defendant Orlando Salvador.

The subject matter between the two cases are also identical. It is the parcel of land known as Waniban Island in Mati, Davao Oriental and the certificate of title covering such property.

The issue is whether or not there is an identity in the causes of action between this petition and Civil Case No. 571.

The test generally applied in determining whether causes of action are identical as to warrant the application of the doctrine of res judicata is to consider whether there is an identity in the facts essential to the maintenance of the two actions or whether the same evidence will sustain both. This is regardless [of whether] the form or nature of the two actions are different. If the same facts or evidence can sustain either, the two actions are considered the same so that the judgment in one is [a] bar to the other. If, however, the two actions rest upon two different state [sic] of facts, or if different proofs would be required to sustain the two actions, a judgment in one is not a bar to the maintenance of the other (Nabus vs. Court of Appeals, 193 SCRA 732; Aroc vs. People's Homesite and Housing Corporation, 81 SCRA 350; Pagsisihan vs. Court of Appeals, 95 SCRA 540).

In this petition, the petitioners claim for nullity of judgment and their argument of lack of notice to them in the cadastral case [is] essentially based on allegations of fraud. As narrated earlier, the petitioners also alleged that the documents submitted by the private respondents to support their application for registration were fraudulent. They further alleged that the withdrawal of claim filed in their behalf in the cadastral case was procured through fraud.

It is, however, clear from the complaint and the decision in Civil Case 571, attached to this petition, that these issues have already been raised by the petitioners and passed upon by the trial court. This can be shown by the following excerpts of the decision of the Court of First Instance.

In any case, even granting arguendo that plaintiffs or their predecessors-in-interest have been in possession of the property before 1945, it would appear that at the time of the filing of the action, they had no more right [to] the property. The main thrust of plaintiffs' assault on the validity of defendant Orlando Salvador is that the waiver of claim is null and void, did not reflect truly the intention of the parties.

An examination of the testimonies of the two (2) witnesses for the plaintiffs, Jose Linzag and Salvacion vda. De Linzag, who were twice presented as witnesses will show that plaintiffs were not able to successfully substantiate their claim on the invalidity of said withdrawal of answer or claim. Nothing was said in their testimonies as would support the contention that the said instrument was not validly executed.

x x x

On the second requirement, that the land must be wrongfully registered through fraud, it is clear from jurisprudence that the fraud in securing title must be actual fraud and must be proven and that the said fraud

must be extrinsic. It is clear that as earlier discussed, plaintiffs failed to prove any actual fraud. The alleged fraud plaintiffs claimed is not extrinsic fraud, granting that fraud was committed. xxx (See CFI Decision, pp. 10, 15; Rollo, pp. 59, 64)

Notably also, the underlying objective or relief sought in this petition and in the earlier case are essentially the same. It is the nullification of the land title in the name of the private respondents and the adjudication of the land in question to the petitioners.

The only difference is the form and nature of the two actions; while the earlier complaint is for the annulment of the land title, this present petition is for the nullification of the judgment upon which the title sought to nullified (sic) in the first case was issued.

It is readily apparent, therefore, that were this petition to be given due course, the same evidence or set of facts as that considered by the Court of First Instance in the annulment case, Civil Case 571, will be also be [sic] considered in this petition. Applying then the test earlier discussed, this court finds that the causes of action in Civil Case 571 and in this petition are the same as to warrant the application of the doctrine of res judicata.

In sum, we find that all the requirements for the application of res judicata are present in this case. This petition should, therefore, be dismissed. The difference in the form of the actions instituted is immaterial. The petitioners may not escape the effect of the doctrine by merely varying the form of his [sic] action (Filinvest Credit Corporation vs. Intermediate Appellate Court, 207 SCRA 59, 63; Sangalang vs. Caparas, 151 SCRA 53; Ibabao vs. Court of Appeals, 150 SCRA 76, 85).

The underlying philosophy of the doctrine of res judicata is that parties should not be permitted to litigate the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity in them in law or estate. It is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated (Ibabao vs. Intermediate Appellate Court, supra, at p. 85; Sangalang vs. Caparas, supra, at p. 59).

As this petition is already barred by the judgment in Civil Case 571, We see no other course of action but to resolve to dismiss this petition.

Their motion for reconsideration[17] and supplemental motion for reconsideration[18] having been denied by the Court of Appeals in its Resolution[19] of 3 October 1995, on the ground that there existed “no new and cogent ground to warrant reversal or modification,” petitioners filed the instant special action for certiorari with mandamus, raising the following issues:

- (1) WHETHER OR NOT THE RESPONDENT COURT OF APPEALS CAN DENY DUE COURSE TO THE INSTANT PETITION FOR ANNULMENT OF JUDGMENT ON THE BASIS THAT THERE WAS AN EARLIER CASE FOR NULLIFICATION OF TITLE BEFORE THE REGIONAL TRIAL COURT;
- (2) WHETHER OR NOT A PETITION FOR DECLARATION OF NULLITY OF TITLE FILED AND DISMISSED BY THE REGIONAL TRIAL COURT IS A BAR (RES JUDICATA) TO THE FILING OF A PETITION FOR ANNULMENT OF JUDGMENT BEFORE THE COURT OF APPEALS OF AN LRC CASE RENDRED BY THE REGIONAL TRIAL COURT SITTING AS A CADASTRAL COURT;
- (3) WHETHER OF NOT THE RESPONDENT COURT OF APPEALS CAN DENY DUE COURSE TO A VALID PETITION ORIGINALLY FILED BEFORE IT MERELY BECAUSE A CASE FOR ANNULMENT OF TITLE WAS ALREADY FILED AND DECIDED BEFORE THE REGIONAL TRIAL COURT;

(4) WHETHER OR NOT PETITION FOR ANNULMENT OF JUDGMENT OF WHICH THE HONORABLE COURT OF APPEALS HAS ORIGINAL JURISDICTION IS THE SAME AS A PETITION FOR NULLITY OF TITLE WHICH THE REGIONAL TRIAL COURT HAS ORIGINAL JURISDICTION.

(5) WHETHER OR NOT THE RESPONDENT COURT VIOLATED THE CONSTITUTIONAL RIGHT OF THE PETITIONERS OF DUE PROCESS IN DISMISSING THE INSTANT CASE EVEN BEFORE RECEIVING EVIDENCE AND WITHOUT DETERMINING THE ACTUAL MERITS OF THE PETITION FILED FOR THE ANNULMENT OF A PATENTLY NULL AND VOID JUDGMENT.

Petitioners contend that the decision in Civil Case No. 571, an action for annulment of title and reconveyance with damages, does not constitute *res judicata* to bar the instant petition for annulment of judgment. Petitioners further insist that the 10 August 1971 decision of the cadastral court is void for violation of due process and extrinsic fraud, stressing that a void judgment never acquires finality and is subject to collateral attack. Petitioners underscore that in the proceedings before the cadastral court they were not informed of the dates of hearing, and as a result, were unable to hire the services of counsel. Thus if they had been afforded their day in court, they could have proved possession of the land for the required number of years that would have entitled them to ownership thereof; and that private respondents procured spurious documents showing a waiver of petitioners' claim over the disputed property. Moreover, petitioners were not furnished a copy of the trial court's decision. Finally, petitioners contend that the transfer of the land title to private respondents Blanco and Serrano, who failed to verify true ownership of the land, was part of Salvador's "fraudulent schemes and strategies" to deprive petitioners of an opportunity to recover the land.

Cunanan's comment[20] filed on 12 January 1996 does not meet squarely the substantive issues raised by petitioners and, instead, interposes the following defenses: (1) he is not a party-in-interest, having sold all his rights over the subject property to Orlando Salvador; (2) Galileo Sibala has not appeared as counsel on behalf of the other respondents; (3) there is no new and cogent reason to disturb the 28 February 1995 decision as the allegations in the petition are a mere rehash of the issues already passed upon by respondent Court of Appeals; and (4) the petition fails to show that petitioners' motion for reconsideration was filed within the reglementary period.

In their comment filed on 4 October 1996, respondents Manuel P. Blanco, Jr. and Jose Manuel Serrano contend that: (1) petitioners were not denied due process since they were afforded ample opportunity to present their side of the controversy; (2) the trial court's finding on the issue of possession and extrinsic fraud must be accorded great weight and respect, if not finality, on appeal; (3) the transfer certificate of title evidencing their ownership over the land has become incontrovertible and indefeasible; (4) they are purchasers in good faith and for value and may safely rely on what appears on the face of the title; (5) the instant petition is barred by *res judicata*; and (7) there is no showing that respondent Court of Appeals gravely abused its discretion when it refused to give due course to the petition.

Petitioners filed separate replies to the comments of Cunanan and Blanco and Serrano.

In his manifestation filed on 20 September 1996, counsel for private respondent Cunanan informed the Court that Cunanan died on 8 April 1996, and on 20 November 1996, said counsel submitted the names and addresses of the heirs of Cunanan. Upon motion of petitioners, to which the other parties submitted their comment, the Court granted, on 2 July 1997, petitioners' motion to substitute the heirs of Cunanan for the latter.

The Court resolved to give due course to the petition and required the parties to submit their memoranda, which petitioners and respondents Serrano and Blanco did on 4 September 1997 and 26 August 1997, respectively. The parties likewise filed reply memoranda.

This petition is devoid of merit.

Respondent Court of Appeals did not err, much less, commit grave abuse of discretion, in dismissing CA-G.R. SP No. 35877 on ground of res judicata.

Paragraph (b) of Section 47(b), Rule 39 of the 1997 Rules of Civil Procedure, which was likewise Section 47(b), Rule 39 of the 1964 Rules of Court, enshrines the doctrine of res judicata:

SEC. 47. Effect of judgment or final orders. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

xxx

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity...

The doctrine of res judicata is a rule which pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity which makes it to the interest of the State that there should be an end to litigation - republicae ut sit litium, and (2) the hardship on the individual that he should be vexed twice for the same cause – nemo debet bis vexari et eadem causa. A contrary doctrine would subject the public peace and quiet to the will and neglect of individuals and prefer gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness.[21]

The requisites of res judicata are: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter and causes of action.[22]

The doctrine of res judicata has two aspects, to wit: (1) the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action; and (2) preclude relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.[23] As earlier shown, the Court of Appeals convincingly demonstrated that the decision in Civil Case No. 571 of the Court of First Instance of Mati, Davao Oriental operates to bar, on the ground of res judicata, the case for annulment of judgment -- CA-G.R. SP No. 35877. As stated earlier, the decision in Civil Case No. 571 dismissed petitioners' complaint for annulment of title and reconveyance with damages; and, in effect, affirmed the judgment of the cadastral court. The judgment in Civil Case No. 571 was then affirmed by the Court of Appeals in its decision in CA-G.R. CV No. 03329, while a petition to review the latter was denied by this Court in G.R. No. 89441.

The claim of petitioners that the judgment in Civil Case No. 571 does not bar CA-G.R. SP No. 35877 because the former was for annulment of title only, while the latter was for annulment of the judgment, is palpably unmeritorious. There is here a clear case of hair-splitting. It is settled that a party cannot evade or avoid the application of res judicata by simply varying the form of his action or adopting a different method of presenting his case.[24] This is as good a time as any to remind lawyers that any attempt to do so merits the Court's condemnation for being an abuse or misuse of the rules of procedure.

We stress in this connection that petitioners may have resorted to the filing of Civil Case No. 571 because they had lost the right to file a petition for review. It is settled that a party deprived of his property in a cadastral proceeding may file within one (1) year from entry of the decree, a petition for review. After the lapse of said period, if the property has not yet passed on to an innocent purchaser for value, an action for reconveyance may

still be filed by the aggrieved party.[25] An action for reconveyance attacks not only the judgment of the cadastral court; it likewise seeks confirmation by the court of plaintiffs' title to the land.

Another more telling reason why CA-G.R. SP No. 35877 should be dismissed was that the remedy of annulment of judgment allowed in Section 9(2) of B.P. Blg. 129 was no longer available to petitioners. Such is available only where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioners.[26] Here, petitioners had, in fact, availed of an action for reconveyance where they litigated the grounds for annulment of judgment. There would be no end to litigations if parties who have unsuccessfully availed of any of the appropriate remedies or lost them through their fault would still be heard in an action to annul the judgment.

A final word before ending.

The proper remedy of a party aggrieved by a decision of the Court of Appeals in an action to annul a judgment of a Regional Trial Court (or of its predecessor the Court of First Instance) is a petition for review on certiorari under Rule 45, where only questions of law may be raised. Petitioners, however, have availed of the special civil action for certiorari and mandamus under Rule 65 of the Rules of Court. No special reasons exist in this case to justify resort to Rule 65. Of course, every lawyer should be familiar with the obvious distinctions[27] between a special civil action for certiorari under Rule 65 and an appeal by petition for review on certiorari under Rule 45. For one, that under Rule 45 is a continuation of the judgment complained of, while that under Rule 65 is an original or independent action.[28] It is likewise settled that, generally, the special civil action of certiorari under Rule 65 will not be allowed as a substitute for failure to timely file a petition for review under Rule 45[29] or for the lost remedy of appeal.[30]

The wrong choice of remedy thus provides another reason to dismiss this petition.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit and the challenged decision of the Court of Appeals in CA-G.R. SP No. 35877 is AFFIRMED in toto.

Costs against petitioners.

SO ORDERED.

Bellosillo, Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Rollo, 27-28, 62.

[2] Id., 137- 138.

[3] Id., 56-60.

[4] Rollo, 332.

[5] Id., 51-54. Per Judge Vicente P. Bullecer.

[6] Id., 76.

[7] Id., 102

[8] Id., 77.

[9] Rollo, 61-67.

- [10] Id., 73-91. Per Judge Jose C. Estrada.
- [11] Rollo, 92-97. Per Associate Justice Lorna S. Lombos-De la Fuente, concurred in by Associate Justices Oscar M. Herrera and Fernando A. Santiago.
- [12] Id., 98.
- [13] Id., 55.
- [14] Id., 25- 47.
- [15] Annex “D” of Petition; Rollo, 108-117. Per Associate Justice (now Associate Justice of the Supreme Court) Antonio M. Martinez, concurred in by Justices Fermin A. Martin, Jr., and Delilah Vidallon-Magtolis.
- [16] Id., 112-116.
- [17] Rollo, 118-122.
- [18] Id., 123-128.
- [19] Id., 131.
- [20] Rollo, 143.
- [21] De Ramos v. Court of Appeals, 213 SCRA 207, 214 [1992]; Baguioro v. Basa, 214 SCRA 437, 444 [1992].
- [22] De Ramos v. Court of Appeals, 213 SCRA 214-215 [1992]; Baguioro v. Basa, 214 SCRA 443 [1992].
- [23] Filinvest Credit Corp. v. Intermediate Appellate Court, 207 SCRA 59, 63 [1992].
- [24] Gutierrez v. Court of Appeals, 193 SCRA 437, 445-446 [1991]; Amberti v. Court of Appeals, 195 SCRA 659, 665-666 [1991]; Allied Banking Corp. v. Court of Appeals, 229 SCRA 252, 260 [1994].
- [25] Llenares v. Court of Appeals, 222 SCRA 10, 22 [1993].
- [26] See Section 1, Rule 47, 1997 Rules of Civil Procedure.
- [27] See 1 Florenz D. Regalado, Remedial Law Compendium 543-544 (6th Revised ed., 1997).
- [28] Dando v. Fraser, 227 SCRA 126, 134 [1993].
- [29] Vda. de Espina v. Abaya, 196 SCRA 312, 321 [1991].
- [30] People v. Court of Appeals, 199 SCRA 539, 547 [1991]; Sy v. Romero, 214 SCRA 187, 193 [1992]; Fajardo v. Bautista, 232 SCRA 291, 298 [1994]; Hipolito v. Court of Appeals, 230 SCRA 191, 204 [1994].

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