

**NATALIA REALTY, INC., PETITIONER, VS. COURT OF APPEALS
(FORMER NINTH DIVISION), JUSTICE ANGELINA
SANDOVAL-GUTIERREZ, CHAIRMAN, JUSTICE MA. ALICIA
AUSTRIA-MARTINEZ AND JUSTICE RU...**

G.R. No. 126462. November 12, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for certiorari under Rule 65 of the Revised Rules of Court seeking to annul the Resolution dated June 27, 1995 of the Former Ninth Division of the Court of Appeals for being issued in excess of jurisdiction or with grave abuse of discretion. The questioned Resolution answered the letter of Judge Francisco A. Querubin, then presiding judge of the Regional Trial Court, Branch 74, Antipolo, Rizal, inquiring as to what orders and decision he should execute in Civil Case No. 359-A. Also assailed in the instant petition are: (1) the Resolution of the Court of Appeals dated June 19, 1996 reiterating its Resolution of June 27, 1995, and (2) the Resolution dated August 26, 1996 denying the motion for reconsideration filed by petitioner.

The Antecedent Facts

On January 24, 1984, Natalia Realty Inc. (“petitioner” for brevity) filed with the Regional Trial Court, Branch 74, Antipolo, Rizal, an action for recovery of possession of two parcels of land situated in Sitio Banabas, Antipolo, Rizal covered by TCT Nos. 31527 and 31528 (“subject property” for brevity). The case was docketed as Civil Case No. 359-A. On January 30, 1984, the trial court issued a temporary restraining order preventing private respondents from obstructing the work then being undertaken by petitioner on the subject property.

The complaint^[1] alleged that Antonio Martinez, Felipe Padua, Mario Perfecto and Hermito Salodega (“private respondents” for brevity) were occupying and illegally squatting on certain portions of the subject property. In their Answer, private respondents claimed that they are the owners of their respective houses and lots that have been in their possession even before the outbreak of World War II.

On August 26, 1991, Judge Senecio O. Ortille issued an Order^[2] dismissing the case for petitioner’s failure to prosecute.

On April 20, 1992, the trial court issued another Order,^[3] this time by Judge Sinforoso S. Nano, granting the motions of private respondents to order petitioner to surrender possession of portions of the subject property to private respondents.

On May 20, 1992, after the August 26, 1991 and April 20, 1992 orders had attained finality, petitioner moved to set aside the orders claiming excusable oversight on the part of its counsel. On March 26, 1993, the trial court through Judge Pablito M. Rojas denied petitioner’s motion for reconsideration.^[4] The trial court ruled that

petitioner's failure to move for reconsideration of the orders within the reglementary period rendered the orders final and executory.

On April 23, 1993, petitioner filed with the Court of Appeals a petition for certiorari questioning the dismissal of the case. The appeal was docketed as CA-G.R. SP No. 30787 and raffled to the Special Fifth Division.

On June 18, 1993, the Court of Appeals dismissed the petition for not having been filed within a reasonable time and because the assailed orders have become final and executory.[5] On October 11, 1993, the Court of Appeals denied petitioner's motion for reconsideration.[6]

On December 21, 1993 an entry of judgment was issued in CA-G.R. SP No. 30787 stating that the June 18, 1993 Resolution became final and executory on October 20, 1993.[7]

On December 27, 1993, Felipe Navarro ("Navarro" for brevity), claiming to be the original counsel of private respondents, filed with the trial court a motion for the issuance of a writ of execution. Navarro filed the motion as a class suit on behalf of private respondents and on his own behalf as lien holder. Navarro sought to enforce the orders of the trial court dated August 26, 1991 and April 20, 1992 that respectively referred to (1) the dismissal of the complaint for failure to prosecute and (2) the surrender of possession of portions of the subject property to private respondents. Petitioner opposed the motion of Navarro. Petitioner argued that the complaint was not a class suit and the decision of the Supreme Court in *Natalia Realty vs. Department of Agrarian Reform*[8] dated August 12, 1993 is a supervening event that prevents the execution of the judgment in Civil Case No. 359-A.

On March 7, 1994, Judge Querubin, then the presiding judge, denied the motion for execution of Navarro.[9] The trial court ruled that the complaint was not a class suit. The trial court also held that the dismissal of the complaint for recovery of possession could not include a disposition restoring possession of portions of the subject property to private respondents as it is presumed that the defendant in an action for recovery of possession is already in possession of the subject property. The April 20, 1992 Order of the trial court restoring possession of portions of the subject property to private respondents could not be enforced because the trial court, in the exercise of its ministerial duty, could not go beyond its final Order of August 26, 1991 dismissing the complaint for recovery of possession. The trial court also ruled that to place private respondents in possession of the property would violate the decision of the Supreme Court in *Natalia Realty vs. Department of Agrarian Reform*.

Navarro appealed to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 44915 and raffled to the Ninth Division.

On June 13, 1994, Navarro filed an ancillary motion with the Fifth Division of the Court of Appeals in CA-G.R. SP No. 30787 praying to set aside the order of the trial court dated March 7, 1994.

On July 15, 1994, the Fifth Division denied the ancillary motion of Navarro since his appeal from the March 7, 1994 order of the trial court was already with the Ninth Division of the Court of Appeals.[10]

On February 6, 1995, the Ninth Division of the Court of Appeals dismissed the appeal of Navarro. The appellate court ruled that Navarro is a disbarred lawyer and had no authority to file the appeal on behalf of private respondents.[11] On February 21, 1995, an entry of judgment was issued in CA-G.R. CV No. 44915.[12]

On March 15, 1995, private respondents filed with the trial court a motion for execution to enforce the final orders and decisions as ordered by the Court of Appeals. Petitioner opposed the motion as it merely reiterated the motion for execution dated December 27, 1993 which the trial court had already denied because of a supervening event, the decision of the Supreme Court in *Natalia Realty vs. Department of Agrarian Reform*.

Instead of acting on the motion of private respondents, Judge Querubin wrote a letter[13] dated April 17, 1995 to

the Ninth Division of the Court of Appeals in CA-G.R. CV No. 44915. Judge Querubin inquired as to what final orders and decisions he should enforce in Civil Case No. 359-A.

On May 11, 1995, Judge Querubin issued an order holding in abeyance the resolution of the motion for execution of private respondents pending action by the Court of Appeals on his letter.

On June 27, 1995, the Ninth Division of the Court of Appeals issued a Resolution[14] answering the letter of Judge Querubin. The appellate court declared that the following orders and decision should be executed in Civil Case No. 359-A: (1) the decision of the trial court dated August 26, 1991 dismissing the complaint; (2) the order of the trial court dated April 20, 1992 ordering petitioner to surrender possession of the property; and (3) the decision of the Fifth Division of the Court of Appeals in CA-G.R. SP No. 30787 dated June 18, 1993 dismissing the petition for certiorari filed by petitioner. The dispositive portion of the Resolution reads:

“WHEREFORE, Judge Francisco A. Querubin is hereby ordered to enforce respondent Court’s orders dated August 26, 1991 and April 20, 1992 as well as Our decision dated June 18, 1993.

SO ORDERED.”[15]

On July 10, 1995, petitioner filed with the Court of Appeals a motion praying to set aside its Resolution dated June 27, 1995. Petitioner contended that the personal letter of Judge Querubin to the appellate court is not authorized by the Rules of Court and deprived the parties of the opportunity to comment on the request.

On August 3, 1995, Judge Querubin issued two orders. The first order[16] granted the motion for execution of private respondents pursuant to the Resolution of the Court of Appeals dated June 27, 1995. This order directed the restoration to private respondents of possession of portions of the subject property that they had occupied prior to the implementation of the temporary restraining order dated January 30, 1984. The second order[17] denied the two motions filed by Navarro, (1) the Motion for Execution dated February 17, 1995 and (2) the Memorandum for Enforcement of the Supreme Court En Banc Order dated March 7, 1995. The denial was based on the ground that the two motions merely reiterated the earlier motion filed also by Navarro dated December 27, 1993 that the trial court had already denied in its Order dated March 7, 1994. The appeal from the March 7, 1994 Order was eventually dismissed by the Court of Appeals for being unauthorized and taken by a disbarred lawyer.

On September 12, 1995, petitioner filed a motion for reconsideration[18] of the two orders of the trial court dated August 3, 1995. Perceiving an apparent conflict between the two orders, petitioner urged the trial court to reconcile the first order granting the motion for execution of private respondents with the first order denying the two motions of Navarro.

In an Order dated August 21, 1995, Judge Querubin inhibited himself from further acting on the case. The case was re-raffled to Branch 71, Regional Trial Court of Antipolo, Rizal with Judge Felix S. Caballes (“Judge Caballes” for brevity) as presiding judge.

On November 6, 1995, Judge Caballes granted the motion for reconsideration of petitioner citing the ruling of the Supreme Court in *Natalia Realty vs. Department of Agrarian Reform* as a supervening event.[19]

On December 6, 1995, private respondents filed an “Urgent Manifestation with Prayer for Issuance of Writ of Execution”[20] with the Former Ninth Division of the Court of Appeals. Private respondents claimed that the November 6, 1995 order of Judge Caballes was a complete reversal of the orders and decisions of the Court of Appeals. Private respondents asked the appellate court to issue a writ of execution in view of the extraordinary circumstances of the case.

On June 19, 1996, the Court of Appeals issued a Resolution[21] reiterating its Resolution of June 27, 1995. The

Resolution also required Judge Caballes to explain why he should not be held in contempt of court for disobeying the appellate court's lawful orders and decisions. The Resolution reads:

“Considering the following incidents:

- 1) Motion dated July 10, 1995, filed by counsel for plaintiff-appellee Natalia Realty, Inc.;
- 2) Comment of defendants a quo (except Salodega) dated July 20, 1995;
- 3) Comment dated August 21, 1995, filed by Felipe Navarro, for and in his own behalf;
- 4) Urgent manifestation with prayer for issuance of writ of execution dated December 6, 1995 filed by counsel for the defendants-appellants; and
- 5) Comment dated March 21, 1996 filed by counsel for appellee Natalia Realty Co., Inc.; the Court RESOLVED,
 - a) that in view of the resolution dated June 27, 1995 which is hereby REITERATED, the plaintiff-appellee's motion dated July 10, 1995 is NOTED, b) to REQUIRE Hon. Felix Caballes of RTC-Br. 71, Antipolo, Rizal to COMMENT why he should not be held in contempt of court for disobeying the lawful orders, decisions of this Court within 10 days from notice hereof.”[22]

On August 26, 1996, the Ninth Division denied petitioner's motion for reconsideration. The dispositive portion of the Resolution reads:

“ACCORDINGLY, plaintiff-appellee's motion for reconsideration is DENIED and Judge Felix Caballes' comment (explanation) is NOTED with a caution to be guided by this Resolution.

SO ORDERED.”[23]

Hence, this petition.

The Issues

Petitioner anchors its petition on the following grounds:

I. THE COURT OF APPEALS ACTED IN EXCESS OF ITS JURISDICTION IN ENTERTAINING A LETTER-QUERY OF JUDGE QUERUBIN, THEN PRESIDING JUDGE OF BRANCH 74, REGIONAL TRIAL COURT, ANTIPOLLO, RIZAL, BEFORE WHOM CIVIL CASE 359-A WAS PENDING, ASKING THE COURT OF APPEALS WHAT FINAL ORDERS AND DECISION HE SHOULD ENFORCE IN COMPLIANCE WITH THE RESOLUTION OF THE COURT OF APPEALS OF FEBRUARY 6, 1995.

II. THE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN ORDERING JUDGE QUERUBIN IN ITS RESOLUTION OF JUNE 27, 1995 TO ENFORCE NOT ONLY THE ORDERS OF THE TRIAL COURT OF AUGUST 26, 1991 AND APRIL 20, 1992 BUT ALSO THE DECISION OF THE FIFTH DIVISION IN CA-G.R. SP NO. 30787.

III. THE COURT OF APPEALS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN ISSUING ITS RESOLUTION DATED JUNE 19, 1996 REITERATING ITS RESOLUTION OF JUNE 27, 1995 WHICH AMONG OTHERS HAD THE EFFECT OF NULLIFYING THE ORDER OF THE TRIAL COURT OF NOVEMBER 6, 1995, WHEN THE PROPER REMEDY AGAINST SAID ORDER SHOULD BE AN APPEAL OR A PETITION FOR CERTIORARI.

IV. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION OR ACTED IN EXCESS OF OR WITHOUT JURISDICTION IN MERELY NOTING PETITIONER'S MOTION OF JULY 10, 1995 PRAYING

FOR THE SETTING ASIDE OF THE RESOLUTION OF JUNE 27, 1995 WHEN IT SHOULD HAVE SET ASIDE SAID RESOLUTION WHICH WAS VIOLATIVE OF PETITIONER'S RIGHT TO DUE PROCESS.

V. THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION OR IN EXCESS OF ITS JURISDICTION IN ORDERING JUDGE CABALLES TO SHOW CAUSE WHY HE SHOULD NOT BE DECLARED IN CONTEMPT OF COURT FOR ISSUING HIS ORDER OF NOVEMBER 6, 1995.[24]

The Ruling of the Court

The petition is without merit.

Petitioner's failure to appear during the presentation of its witness caused the dismissal of its complaint in Civil Case No. 359-A. As a rule, the dismissal for failure to prosecute is an adjudication on the merits and is with prejudice.[25] It is beyond dispute that the orders of the trial court dated August 26, 1991 and April 20, 1992 respectively dismissing the case and granting possession of portions of the subject property to private respondents have long become final and executory.

It took petitioner almost nine months to move for the reconsideration of the order of dismissal and more than a year to file an appeal. In dismissing the belatedly-filed appeal of petitioner in CA-G.R. SP No. 30787, the Special Fifth Division of the Court of Appeals held that the assailed orders are already final and executory and could no longer be the subject of an appeal. The June 18, 1993 Resolution of the appellate court dismissing the appeal of petitioner has also attained finality as an entry of judgment has been issued.[26]

The February 6, 1995 Resolution of the Special Former Ninth Division of the Court of Appeals in CA-G.R. CV No. 44915 dismissing the appeal of Navarro is also final and executory as judgment has likewise been entered.[27] This resolution recognized the finality of the August 26, 1991 and April 20, 1992 Orders of the trial court and the June 18, 1993 Resolution of the Court of Appeals in CA-G.R. SP No. 30787. The February 6, 1995 Resolution further ordered the remand of the original records to the trial court "for enforcement of the final Orders and Resolution"[28] in Civil Case No. 359-A.

The general rule is when a court's judgment or order becomes final and executory, it is the ministerial duty of the trial court to issue a writ of execution to enforce the judgment or order.[29] In this case, because of the innumerable delays, the enforcement of the final orders and decision has been long overdue. The delays are partly attributable to the fact that the case went through a number of presiding judges. The filing of unauthorized motions and appeal by Navarro complicated what was otherwise just a simple case of enforcement of final judgment. But it was petitioner's intolerable strategy of filing motions, some belatedly filed, to thwart execution that caused this case to drag for more than a decade.

Judge Querubin could have ended the delays had he readily complied with the February 6, 1995 Resolution of the Court of Appeals ordering him to execute the final orders and decision in Civil Case No. 359-A. Instead, Judge Querubin wrote a letter to the Court of Appeals asking it to specify the final orders and decision that should be enforced. In response to the query, the Court of Appeals issued another resolution identifying these final orders and decision.

The execution of the final orders and decision again suffered another set back when the new presiding judge, Judge Caballes, set aside the two orders issued by Judge Querubin on August 3, 1995. The two orders were issued by Judge Querubin in compliance with the directive of the Court of Appeals to enforce the August 26, 1991 and April 20, 1992 orders of the trial court and the June 18, 1993 Resolution of the Court of Appeals in CA-G.R. SP No. 30787. Judge Caballes instead granted the motion for reconsideration of petitioner invoking the principle of supervening event as a ground for setting aside the final orders and decision in the case. On motion of private

respondents, the Court of Appeals issued another resolution reiterating the final orders and decision that should be enforced. The resolution also ordered Judge Caballes to explain why he should not be cited for contempt of court.

Litigation must end at some point. Petitioner, however, remains undaunted and relentless in frustrating the enforcement of the orders of execution. Now, petitioner implores the Court to set aside the final orders and decision. Petitioner relies on these points: (1) the legality of the Court of Appeals' resolution answering the letter of Judge Querubin as to what final orders must be executed in Civil Case No. 359-A; (2) the jurisdiction of the Ninth Division of the Court of Appeals in citing Judge Caballes in contempt of court and in issuing the resolution reiterating the final orders and decision that Judge Caballes must execute in Civil Case No. 359-A; (3) the existence of a supervening event, the ruling of the Court in *Natalia Realty vs. Department of Agrarian Reform*; and (4) the need to reconcile the two orders of Judge Querubin both dated August 3, 1995.

Petitioner claims that the letter of Judge Querubin is a personal inquiry or consulta to the appellate court. The law and the Revised Rules of Court do not sanction such a procedure. Petitioner also claims that it was denied due process when the appellate court failed to notify petitioner and afford it the opportunity to be heard, considering that petitioner would be affected by the opinion or advice the appellate court would give to Judge Querubin. Petitioner likens the letter of Judge Querubin to an action for declaratory relief, an action that must be filed by an interested party. Judge Querubin, petitioner opines, is not an interested party. Petitioner asserts that the letter of Judge Querubin is a personal letter to the appellate court which is improper and unethical and both Judge Querubin and the appellate court could be held responsible for gross ignorance of the law, if not judicial misconduct, and for grave abuse of discretion.

While we agree with petitioner that Judge Querubin's query is not provided for in the Rules of Court, it is nevertheless not prohibited. What is apparent from the rather unorthodox course of action taken by Judge Querubin is his shallow comprehension of the case before him. As presiding judge, Judge Querubin is duty bound to know the final orders and decision already issued in the case assigned to him. Moreover, the February 6, 1995 Resolution of the Court of Appeals is unmistakably clear as to what final orders and decisions must be enforced. These are the August 26, 1991 and April 20, 1992 orders of the trial court and the June 18, 1993 Resolution of the Court of Appeals in CA-G.R. SP No. 30787. The clarity of the February 6, 1995 Resolution left no room for ambiguity that would have placed Judge Querubin in a quandary.

Judge Querubin claimed in his letter that the February 6, 1995 Resolution of the Court of Appeals dismissing the appeal of Navarro had in effect rendered final his Order dated March 7, 1994. This Order denied the motion for execution filed by Navarro on behalf of private respondents. Judge Querubin sought to clarify which order he should enforce, the April 20, 1992 Order granting possession of portions of the subject property to private respondents or the March 7, 1994 Order denying the motion for execution filed by Navarro on behalf of private respondents. The answer should have been obvious to Judge Querubin.

The dismissal of Navarro's appeal by the appellate court did not in any way affect the April 20, 1992 Order. In its Resolution dated February 6, 1995 in CA G.R. CV No. 44915, the appellate court held that Navarro is a disbarred lawyer and had no authority from private respondents to file the motion for execution on their behalf before the trial court. Therefore, it follows that the March 7, 1994 Order of the trial court denying the motion for execution filed by Navarro should not prejudice private respondents' right to the issuance of a writ of execution upon motion filed by a duly authorized lawyer. Private respondents' right to possession had been secured already in the earlier Order of the trial court dated April 20, 1992, one of the final orders that Judge Querubin should have enforced.

Judge Querubin's query is not an action for declaratory relief. Section 1 of Rule 64 of the Rules of Court[30]

provides the requisites of an action for declaratory relief. In interpreting these requisites, the Court has ruled that:

“Under this rule, only a person who is interested 'under a deed, will, contract or other written instrument, and whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.' This means that the subject matter must refer to a deed, will, contract or other written instrument, or to a statute or ordinance, to warrant declaratory relief. Any other matter not mentioned therein is deemed excluded. This is under the principle of *expressio unius est exclusio alterius*.”[31]

The letter of Judge Querubin pertained to final orders and decisions of the courts that are clearly not the proper subjects of a petition for declaratory relief. Thus, the requisites prescribed by the Rules of Court in an action for declaratory relief are not applicable to the letter of Judge Querubin.

The Court of Appeals did not act with grave abuse of discretion when it issued a resolution answering the letter of Judge Querubin. The term grave abuse of discretion has a technical and set meaning. Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[32] The resolution issued by the Court of Appeals merely specified the orders and decision that are to be enforced, orders that are undoubtedly final and executory. Furthermore, the Court of Appeals had the bounden duty to facilitate the prompt disposition of this case. To disregard the letter of Judge Querubin would have only prolonged the delay in the execution of the final orders and decision.

Petitioner's claim that it was denied due process is baseless. In this petition, petitioner acknowledges the fact that on May 11, 1995, Judge Querubin issued an order holding in abeyance the resolution of the motion for execution of private respondents pending action by the Court of Appeals on his letter. Judge Querubin's query was not at all clandestine. Petitioner and private respondents were duly notified. Petitioner therefore cannot feign denial of due process since it was notified and had the opportunity to present its side.[33] The suspension of the motion for execution because of Judge Querubin's query was another needless delay that actually worked in petitioner's favor.

Petitioner, fully aware of the Court of Appeals' impending action on the letter of Judge Querubin, again failed to raise on time its objections against the letter. The Court of Appeals issued on June 27, 1995 its Resolution answering Judge Querubin's query. It was only on July 10, 1995 that petitioner filed its motion against the letter. Private respondents, on the other hand, interposed their objections to the letter on June 9, 1995, prior to the issuance of the Court of Appeals' Resolution. Petitioner cannot now bewail the fact that its July 10, 1995 motion was merely noted by the Court of Appeals in its June 19, 1996 Resolution. The Court of Appeals could only take note of the July 10, 1995 motion of petitioner, as the matter raised therein was already a *fait accompli*.

Petitioner accuses the Ninth Division of the Court of Appeals of encroaching on the jurisdiction of the Fifth Division when it ordered Judge Querubin to enforce not only the orders of the trial court but also the decision of the Fifth Division in CA-G.R. SP No. 30787.

Petitioner's allegation is untenable. To recall, the Ninth Division of the Court of Appeals came into the picture when Navarro appealed from the March 7, 1994 Order of the trial court denying the motion for execution he filed on behalf of private respondents. The appeal was docketed as CA-G.R. CV No. 44915. The records of Civil Case No. 359-A were then transmitted to the Ninth Division. The appeal of Navarro was perfected after the Special Fifth Division's dismissal of the petition of petitioner in CA-G.R. SP No. 30787 had already attained finality. In fact, when Navarro filed an ancillary motion with the Special Fifth Division in CA-G.R. SP No. 30787, the Special Fifth Division merely took note of the ancillary motion. The Special Fifth Division ruled that it no longer

had jurisdiction to set aside an order issued subsequent to the finality of its decision to dismiss the petition of petitioner in CA-G.R. SP No. 30787. The Special Fifth Division pointed out that the proper remedy of Navarro was in the appeal he had already interposed in CA-G.R. CV No. 44915.

Clearly, the Ninth Division had jurisdiction over the appeal of Navarro. Based on the pleadings filed before it, the Ninth Division was made aware of the finality of the August 26, 1991 and April 20, 1992 orders of the trial court and of the June 18, 1993 Resolution of the Fifth Division in CA-G.R. SP No. 30787. The Ninth Division dismissed the appeal of Navarro because he is a disbarred lawyer and he had no authority to file the motion for execution and appeal on behalf of private respondents. The dismissal of the unauthorized appeal therefore has no bearing on the finality of the orders and decision in Civil Case No. 359-A. It then became the ministerial duty of the Court of Appeals to order the remand of the records of Civil Case No. 359-A to the trial court for the enforcement of the trial court's final orders as well as the final decision of the Fifth Division in CA-G.R. SP No. 30787.

Petitioner questions the jurisdiction of the Ninth Division of the Court of Appeals to set aside the order of Judge Caballes granting the motion for reconsideration of petitioner. Petitioner believes that the proper remedy against the order of Judge Caballes is an appeal or a petition for certiorari. Instead, private respondents filed an "Urgent Manifestation with Prayer for Issuance of Writ of Execution" with the Ninth Division of the Court of Appeals under the same case of CA-G.R. CV 44915. Petitioner insists that the jurisdiction of the Ninth Division of the Court of Appeals in CA-G.R. CV 44915 had already been terminated when its resolution dismissing the appeal of Navarro became final. The Ninth Division of the Court of Appeals no longer had the authority to act on any cause of action such as to review the order of Judge Caballes, much less to declare that Judge Caballes had disobeyed a lawful order of the appellate court.

Petitioner's arguments are without basis. There is a distinction between the jurisdiction of a court to modify its judgment and its jurisdiction to enforce its judgment. The jurisdiction of the court to amend, modify or alter its judgment terminates when the judgment becomes final.[34] This is the principle of immutability of final judgment that is subject to only few exceptions,[35] none of which is present in this case. On the other hand, the jurisdiction of the court to execute its judgment continues even after the judgment has become final for the purpose of enforcement of judgment.[36]

Judge Caballes' refusal to enforce the final orders and decision was not only in total disregard of his ministerial duty, it was also in blatant defiance of the February 6, 1995 Resolution of the Court of Appeals that has also long been final and executory. Judge Caballes also disobeyed the June 27, 1995 Resolution of the Court of Appeals directing Judge Querubin to enforce the orders listed in the Resolution. Well settled is the rule that the Regional Trial Court cannot impede the execution of the decision of a higher court.[37] For the sole purpose of enforcing its final order, the Court of Appeals still had jurisdiction to command Judge Caballes to comply with its order and to cite him in contempt in case he refused to do so. The Court of Appeals retained the jurisdiction to enforce its final orders. An appeal or a petition for certiorari from the order of Judge Caballes would have only further caused unwarranted delays when by mere motion, the Ninth Division of the Court of Appeals in CA-G.R. CV No. 44915 could still exercise its jurisdiction over the execution of its final order.

One of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.[38]

Before an event can be considered a supervening event, justifying the modification or alteration of a final

judgment, the event must have transpired after the judgment has become final and executory. The decision of the Court in *Natalia Realty vs. Department of Agrarian Reform* was promulgated on August 12, 1993. True, this decision was issued after the dismissal of Civil Case No. 359-A became final. However, the decision in CA-G.R. SP No. 30787[39] became final and executory on October 20, 1993 while the entry of judgment in CA-G.R. CV No. 44915 was issued on February 21, 1995. The ruling in *Natalia Realty vs. Department of Agrarian Reform* is evidently not a supervening event. It was already in existence even before the decisions in the two appealed cases attained finality.

Petitioner was persistent in invoking *Natalia Realty vs. Department of Agrarian Reform* as a supervening event before the trial court. Strangely, petitioner was not equally so determined in raising this ground before the appellate court. If petitioner is truly convinced that the ruling in *Natalia Realty vs. Department of Agrarian Reform* is indeed a supervening event, petitioner should have invoked it in CA-G.R. SP No. 30787 and CA-G.R. CV No. 44915 before the decisions of the appellate court in these cases became final. Petitioner failed to do so. The Court has ruled in *Pacific Mills, Inc. vs. Padolina*[40] that a party's failure to bring to the attention of the appellate court, through the filing of proper motions, the existence of a supervening event, is deemed a waiver of such defense. Petitioner must now accept the consequences of its inaction.

There is another compelling reason why the ruling in *Natalia Realty vs. Department of Agrarian Reform* does not qualify as a supervening event. A plain reading of the decision in that case will readily reveal that it is not applicable to Civil Case No. 359-A. The sole issue in *Natalia Realty vs. Department of Agrarian Reform* was whether the land registered under the name of therein petitioner Natalia, covered by TCT No. 31527, was within the coverage of the Comprehensive Agrarian Reform Law of 1988 ("CARL" for brevity). The Court ruled that the Department of Agrarian Reform erred in including the land in question within the coverage of CARL when this law only covers agricultural lands. The land in *Natalia Realty vs. Department of Agrarian Reform* was already converted to non-agricultural uses prior to the enactment of CARL and such conversion bound the Department of Agrarian Reform.

The present case stemmed from a complaint for recovery of possession or *accion publiciana* filed by Natalia, herein petitioner. *Accion publiciana* is a plenary action to recover possession.[41] When the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of Court, the complaint should be for *accion publiciana*. [42] The objective of the parties in *accion publiciana* is to recover possession only, not ownership.[43]

The rights asserted and reliefs prayed for in *Natalia Realty vs. Department of Agrarian Reform* and in this case are very different. *Natalia Realty vs. Department of Agrarian Reform* did not involve the question of possession, not even the issue of ownership. The decision in that case merely resolved the issue of whether the land covered by TCT No. 31527 should be placed under the coverage of CARL. The Court in *Natalia Realty vs. Department of Agrarian Reform* even underscored the fact that the question of possession is a separate and distinct issue. This point can be gleaned from the Court's pronouncement in that case, to wit:

"Anent the argument that there was failure to exhaust administrative remedies in the instant petition, suffice it to say that the issues raised in the case filed by SAMBA members differ from those of petitioners. The former involve possession; the latter, the propriety of including under the operation of CARL lands already converted for residential use prior to its effectivity."

Even assuming that the ruling in *Natalia Realty vs. Department of Agrarian Reform* is a supervening event, an absolute suspension of the writ of execution in the present case would have been unjust and erroneous. In this case, what is in dispute is the possession of two parcels of land covered by TCT No. 31527 and TCT No. 31528.

The land covered by TCT No. 31528 was not adjudicated upon in *Natalia Realty vs. Department of Agrarian Reform*. The only parcel of land in issue in that case is the one covered by TCT No. 31527. Clearly then, the land covered by TCT No. 31528 could not have been bound by the ruling in *Natalia Realty vs. Department of Agrarian Reform*.

Petitioner urges the Court to reconcile the two orders issued by Judge Querubin on August 3, 1995. The first order enforces the order of execution and is pursuant to the June 27, 1995 Resolution of the Court of Appeals. The second order denies the motion for execution filed by Navarro. In denying the motion for execution of Navarro, Judge Querubin cited the March 7, 1994 Order of the trial court and the February 6, 1995 Resolution of the Court of Appeals. According to petitioner, the two orders of Judge Querubin are contradictory. Petitioner would like the Court to believe that the mere mention of the March 7, 1994 Order is a recognition of the case of *Natalia Realty vs. Department of Agrarian Reform* as a supervening event.

A perusal of the two orders dated August 3, 1995 in their entirety debunks petitioner's claim. The August 3, 1995 Order denying the motion for execution of Navarro mentioned the March 7, 1994 Order only to emphasize that the appeal of Navarro from the March 7, 1994 Order was dismissed by the Court of Appeals and the dismissal had already attained finality. As explained in the August 3, 1995 Order, the Court of Appeals dismissed the appeal because it "was unauthorized and taken by a disbarred attorney beyond the reglementary period."^[44] Reference to the March 7, 1994 Order was merely incidental. It was not made to recognize the existence of a supervening event. This fact becomes all the more evident since there is another Order issued on August 3, 1995 granting possession of portions of the subject property to private respondents.

On January 13, 1997, while this case was pending before the Court, the 359-A Multi-purpose Cooperative ("Cooperative" for brevity) filed a Motion for Leave to Intervene.^[45] The members of the Cooperative include private respondents and the alleged original occupants of the subject property. The Cooperative anchors its right to intervene on the Deed of Transfer/Assignment^[46] executed by private respondents in favor of the Cooperative. Private respondents have expressed their full consent to the motion for intervention.^[47]

The motion for intervention must be denied. Rule 12, Section 2 of the Rules of Court was then the controlling provision on intervention.^[48] It read:

"Sec. 2. Intervention. — A person may, before or during a trial be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or by an officer thereof."

The Motion for Intervention was not seasonably filed as it was not filed before or during trial. Final judgment has been in fact rendered in this case.

The purpose of intervention is to enable a stranger to an action to become a party to protect his interest and the court incidentally to settle all conflicting claims.^[49] The Cooperative is not a stranger to the action. Its legal interest in this case springs from the "Deed of Transfer/Assignment" executed in its favor by private respondents. As an assignee or transferee pendente lite, the Cooperative is a successor-in-interest of the transferor, private respondents, who are parties to the action. The applicable provision then was Rule 3, Section 20, governing transfers of interest pendente lite. It provided:

"Sec. 20. Transfer of interest.—In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party."

In *Santiago Land Development Corporation v. Court of Appeals*,^[50] we have ruled that a transferee pendente lite of the property in litigation does not have a right to intervene. We held that a transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him.^[51] It is not legally tenable for a transferee pendente lite to still intervene. Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee pendente lite.^[52]

The Court views with disfavor the unjustified delay in the enforcement of the final orders and decision in this case. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.^[53] The finality of the orders and decision in Civil Case No. 359-A should have reduced this case to a simple case of enforcement of judgment. However, petitioner's dilatory tactics made this case confounding. Worse, petitioner's maneuverings have prevented the courts from discharging their duty of disposing cases with finality. The Court will not allow petitioner to further forestall the execution of the final orders and decision in this case.

WHEREFORE, the petition is DISMISSED. The Regional Trial Court of Antipolo, Rizal, Branch 74, shall forthwith issue and cause to be immediately enforced an ALIAS WRIT OF EXECUTION of the Order of August 3, 1995 granting possession to private respondents of portions of the parcels of land covered by TCT Nos. 31527 and 31528 (now No. N-67845). This decision is immediately executory. The Clerk of Court is directed to remand the records of the case to the court of origin.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Rollo, pp. 167-172.

[2] Ibid., p. 174.

[3] Ibid., pp. 175-176.

[4] Ibid., p. 177.

[5] Ibid., p. 41. Penned by Associate Justice Minerva P. Gonzaga-Reyes with Associate Justices Consuelo Ynares-Santiago and Bernardo P. Pardo concurring.

[6] Ibid., pp. 43-44.

[7] Records of Civil Case No. 359-A , Annex "D", p. 89.

[8] 225 SCRA 278 (1993).

[9] Rollo, pp. 45-46.

[10] Records of Civil Case No. 359-A, Annex "1", p. 13.

[11] Rollo, p. 22. Penned by Associate Justice Ruben T. Reyes with Associate Justices Oscar M. Herrera and Angelina Sandoval-Gutierrez concurring.

[12] Records of Civil Case No. 359-A, p. 97.

[13] Ibid., pp. 98-100.

[14] Rollo, p. 28.

[15] Ibid., Penned by Associate Justice Ruben T. Reyes with Associate Justices Angelina Sandoval-Gutierrez and Ma. Alicia Austria-Martinez concurring.

[16] Records of Civil Case No. 359-A, pp. 149-150.

[17] Ibid., pp. 147-148.

[18] Ibid., Annex “E”, pp. 189-195.

[19] Ibid., pp. 161-163.

[20] Ibid., pp. 152-159.

[21] Ibid., p. 197.

[22] Rollo, p. 31.

[23] Ibid., p. 36.

[24] Ibid., p. 11.

[25] De Knecht vs. Court of Appeals, 290 SCRA 223 (1998).

[26] Supra at note 7.

[27] Ibid., p. 97.

[28] Rollo, p. 22.

[29] David vs. Court of Appeals, 316 SCRA 710 (1999).

[30] 1994 Rules of Court.

[31] Aviles vs. Court of Appeals, 264 SCRA 473 (1996).

[32] Integrated Bar of the Philippines vs. Zamora, 338 SCRA 81 (2000).

[33] See Espina vs. Court of Appeals, 294 SCRA 525 (1998).

[34] Gabaya vs. Mendoza, 113 SCRA 400 (1982).

[35] Ibid.

[36] Ibid.

[37] De la Cruz vs. Eisma, 328 SCRA 151 (2000).

[38] Clavano vs. Housing and Land Use Regulatory Board, G.R. No. 143781, February 7, 2002.

[39] 346 SCRA 559 (2000).

[40] Ibid.

[41] Almora vs. Court of Appeals, 309 SCRA 586 (1999).

[42] Ibid.

[43] Ibid.

[44] Rollo, p. 60.

[45] Ibid., pp. 192-196.

[46] Ibid., pp. 203-204.

[47] Ibid., Comment on Motion for Intervention with Urgent Motion to Lift TRO, pp. 306-309.

[48] The 1997 Rules of Court took effect on July 1, 1997. The applicable provisions of the 1997 Rules of Court on intervention are now embodied in Sections 1 and 2 of Rule 19.

[49] Santiago Land Development Corporation vs. Court of Appeals, 267 SCRA 79 (1997).

[50] Ibid.

[51] Ibid.

[52] Ibid.

[53] Nasser vs. Court of Appeals, 245 SCRA 20 (1995).

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