

CONCHITA L. ABELLERA, PETITIONER, VS. HON. COURT OF APPEALS, HON. JULIETO P. TABIOLO, AS JUDGE, RTC, QUEZON CITY, BRANCH 106, AND SPS. BELTRAN AND NICERITA ACEBUCHE USING ASSUME...

G.R. No. 127480. February 28, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals, dated January 26, 1996, affirming the decision of the Regional Trial Court, Branch 106, Quezon City, and its resolution, dated November 19, 1996, denying the motion for reconsideration.

The facts are as follows:

Since 1968, petitioner Conchita L. Abellera and her "adoptive"[2] parents, Roberto and Virginia Acebuche, had resided in a semi-bungalow house at No. 571 A. Bonifacio St., Brgy. Bagong Silang, Quezon City. In 1990, petitioner became a beneficiary of said lot under the urban housing program of the Quezon City government.[3] Sometime thereafter, she went to Samar for vacation and left the house and lot to the care of her elder brother, private respondent Beltran Acebuche. When she returned in 1991, private respondents refused to vacate the house despite petitioner's demands, the last of which was made in April 1993. As attempts to mediate the dispute between the siblings at the barangay level failed, petitioner sued private respondents for unlawful detainer before the Metropolitan Trial Court, Branch 35, Quezon City.

On the basis of the position papers and other documentary evidence submitted by the parties, the MeTC, on December 24, 1993, rendered a decision, the dispositive portion of which provides:[4]

IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of plaintiff Conchita L. Abellera ordering defendant spouses Beltran and Nicerita Acebuche a.k.a. Beltran and Nicerita Abellera and all persons claiming rights under them to vacate the premises identified as Block 18, Lot 9 located at No. 571 A. Bonifacio St., Bgy. Bagong Silang, Quezon City and to turn-over possession thereof to Plaintiff herein. Defendants are likewise ordered to pay the following:

- 1) the amount of P3,000.00 per month computed from December 23, 1990 representing the reasonable compensation for their use and occupancy of the premises in question until the same is completely vacated by defendants and all persons claiming rights under them;
- 2) the amount of P5,000.00 as and for attorney's fees; and
- 3) the cost of suit.

Private respondents appealed and the case was assigned to the Regional Trial Court, Branch 106, Quezon City, presided by Judge Juliето P. Tabiolo. Pending appeal, the decision of the MeTC was executed and fully satisfied

as private respondents failed to file a supersedeas bond. On February 22, 1994, the court required the parties to file their memoranda, which petitioner did on April 15, 1994. On April 18, 1994, private respondents moved for a new trial, but this was dismissed by the court on April 26, 1994 for failure to prosecute.[5] On May 27, 1994, private respondents moved for admission of additional evidence consisting of a Contract to Sell between them and the Quezon City government, dated March 3, 1994, involving the lot in dispute and receipts for payment of said lot for the months of March and April 1994.[6] This motion was submitted for resolution on May 31, 1994.[7] After private respondents filed their memorandum on July 5, 1994, the court directed the parties to attend a preliminary conference which was held on July 26, 1994.

After said conference, the court issued the following order:[8]

When the clarificatory conference was called, the court was confronted with documents presented by both parties. On the side of [Abellera], a document certifying that she is an awardee of the lot in question was shown. [Acebuche], on the other hand, is also presenting a document showing that the deed of sale was executed in [his] favor covering the same lot by the city government of Quezon City.

In the face of this conflict, it is the sense of the court that the two parties, who issued these documents, should be summoned to the court for further clarificatory hearing, which for that purpose is set on August 2, 1994, at 8:30 a.m.

Send appropriate subpoena immediately.

As it turned out, seven "clarificatory" hearings[9] were held by the court, during which the parties, in compliance with the court's directive, presented testimonial evidence in support of their documentary proofs. At the hearing on August 13, 1994, on motion of private respondents, the court ordered the deputy sheriff to conduct an ocular inspection of the disputed property. The deputy sheriff, after conducting an inspection, submitted a report to the court on October 14, 1994.[10]

On December 15, 1994, the RTC rendered judgment reversing the decision of the MeTC, the pertinent portion of which states:[11]

All told and painstakingly reviewed, sedately examined and objectively analyzed, this Court is inclined to believe that the plaintiff/appellee cannot claim any right over the property in question, since there is no evidence on records to show that she has any interest thereon, not even any right being transferred to her. A fortiori, plaintiff's claim that defendants-appellants are unlawfully withholding possession of subject premises in violation of her rights and interest as occupant and owner of the property in question, cannot be accorded the court's conformance, as the evidence on record does not sustain that claim.

WHEREFORE, prescinding from the foregoing premises, judgment is hereby rendered reversing the decision rendered by the Court a quo, and in lieu thereof, another is hereby rendered dismissing the complaint, with costs against the plaintiff.

Petitioner moved for reconsideration on the ground that the appellate court exceeded its jurisdiction when it, in effect, conducted a trial de novo and ordered an ocular inspection of the property. Before the court could act on her motion, however, petitioner filed, on February 14, 1995, a motion seeking the inhibition of Judge Julieta P. Tabiolo. Her motion was granted and the case was raffled to Branch 80 of the court, presided by Judge Agustin S. Dizon. In his order dated March 17, 1995, Judge Dizon declared all pending incidents in the case submitted for resolution.[12]

Again, before the new judge could resolve her motion for reconsideration and other incidents in the case, petitioner, on April 4, 1995, filed a petition for certiorari in the Court of Appeals raising substantially the same

grounds cited in her motion for reconsideration.[13]

On January 26, 1996, the Court of Appeals rendered judgment the dispositive portion of which states:[14]

WHEREFORE, the petition is DENIED for lack of merit. The Motion To Allow Restoration of Possession filed by defendants/private respondents is GRANTED. As prayed for, an order is hereby issued directing herein plaintiff/petitioner to allow defendants/private respondents to occupy the subject lot and directing plaintiff/petitioner to peacefully turn over possession to defendants/private respondents.

Hence, this appeal. Petitioner alleges that -

- THE COURT OF APPEALS GRAVELY ERRED WHEN IT ALLOWED THE REGIONAL TRIAL COURT IN THE EXERCISE OF ITS APPELLATE JURISDICTION IN AN UNLAWFUL DETAINER CASE COVERED BY THE REVISED RULES ON SUMMARY PROCEDURE TO CONDUCT CLARIFICATORY HEARINGS AND ALLOW A PARTY TO SUBMIT ADDITIONAL EVIDENCE.
- THE COURT OF APPEALS GRAVELY ERRED WHEN IT ALLOWED THE REGIONAL TRIAL COURT SITTING AS AN APPELLATE COURT TO ISSUE AN ORDER FOR THE CONDUCT OF AN OCULAR INSPECTION.

The petition is partly meritorious.

The Court of Appeals correctly ruled that the Regional Trial Courts could not, in the exercise of its appellate jurisdiction, hear the case de novo in the guise of clarificatory hearings, during which additional evidence was presented by the parties and an ocular inspection was conducted. It held:[15]

The extent of jurisdiction of a Regional Trial Court on appeal is established as follows:

Section 22, Batas Pambansa Blg. 129

SEC. 22. Appellate Jurisdiction. – Regional Trial Court shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts. The decision of the Regional Trial Courts in such cases shall be appealable by petition for review to the Court of Appeals which may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed. (italics ours).

Section 21(d), Interim Rules of Court -

Section 21. Appeal to the Regional Trial Courts. -

(d) Within fifteen (15) days from receipt by the parties of the notice referred to in the preceding paragraph, they may submit memoranda and/or briefs, or be required by the regional trial court to do so. After the submission of such memoranda and/or briefs, or upon the expiration of the period to file the same, the regional trial court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may have been filed. (italics ours)

Section 45, Republic Act No. 6031 -

Section 45 x x x "Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts: Provided, That the parties may submit memoranda and/or brief with oral argument if so requested: Provided, however, That if the case was tried in a city or municipal court before the latter became a court of record, then on appeal the case shall proceed by trial de novo." (italics ours)

Thus, there can be no trial de novo. The appellate court must decide the appeal on the basis of the records and memoranda/brief (Herrera, Oscar M. Remedial Law, Volume Two-Civil Procedure, Rules 24-56, 1990, p. 216, citing R.A. 6031, Section 22 (d), B.P. 129, Rule 21 (d), IRC).

Nevertheless, it ruled that petitioner was estopped from claiming that the trial court acted in excess of jurisdiction as she herself had participated in the trial de novo and failed to object, through counsel, to the issuance of the order to conduct an ocular inspection.[16]

Indeed, although Regional Trial Courts should decide cases on appeal on the basis solely of the record of the proceedings in Municipal Trial Courts and other courts of equal rank, nonetheless, the principle of estoppel may bar a party from questioning the reception of additional evidence, as in this case. In *Tijam v. Sibonghanoy*,[17] this Court ruled:

[A] party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated --- obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (*Pease vs. Rathbun-Jones etc.*, 243 U.S. 273, 61 L. Ed. 715, 37 S. Ct. 283; *St. Louis etc. vs. McBride*, 141 U.S. 127, 35 L. Ed. 659.) And in *Littleton vs. Burgess*, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

Upon the principle stated in *Sibonghanoy*, we hold that petitioner cannot be permitted to question at this stage the reception of additional evidence and ocular inspection of property after she participated but eventually lost in what she now calls the irregular proceedings of the trial court. During the seven hearings conducted by Branch 106 of the RTC, Quezon City, petitioner presented no less than seven witnesses in addition to several documentary evidence to support her case. Afterwards, on September 15, 1994, she filed her Formal Offer of Exhibits[18] followed by a Supplemental Memorandum on September 26, 1994.[19] The order to conduct ocular inspection was likewise made in open court, the presence of petitioner's counsel.[20] It was only after the court rendered its ruling on December 15, 1994, reversing the lower court, that petitioner, in her motion for reconsideration, questioned for the first time the authority of said court to conduct the hearings and ocular inspection.[21]

We hold, however, that the Court of Appeals erred in granting private respondents' motion for execution pending appeal. For, indeed, the case was not with said court on appeal but on a petition for certiorari. Thus, the appellate court's jurisdiction was only to pass upon the validity of the orders of the RTC in the conduct of clarificatory hearings and ocular inspection. Since the RTC has yet to act on private respondents' motion for execution pending appeal, this matter should have been left for resolution by the trial court, not by the Court of Appeals.

WHEREFORE, the decision of the Court of Appeals, dated January 26, 1996, is **AFFIRMED** insofar as it denies petitioner's petition for certiorari, but **REVERSED** insofar as it grants private respondents' motion to be placed in possession of the disputed property.

SO ORDERED.

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

[1] Per Justice Ma. Alicia Austria-Martinez and concurred in by Justices Pedro A. Ramirez and Salvador J. Valdez, Jr.

[2] Petitioner was adopted without the benefit of judicial proceedings.

[3] Records, p. 11.

[4] MeTC Decision, pp. 4-5; Records, pp. 237-238.

[5] Records, pp. 278-279.

[6] Id., pp. 278-279.

[7] Id., p. 292.

[8] Id., p. 303.

[9] August 2, 12, 22, 23, 29 and September 13 & 16, 1994.

[10] Records, pp. 520-521.

[11] Id., pp. 356-359.

[12] Id., p. 385.

[13] CA Decision, p. 4; Rollo, p. 26.

[14] Id., p. 12; id., p. 34.

[15] Id., pp. 5-7; id., pp. 27-29.

[16] Id., pp. 7-11; id., pp. 29-33.

[17] 131 Phil. 556, 564 (1968), see also *Henson v. Director of Lands*, 55 Phil. 586 (1931) for a similar but earlier ruling.

[18] Records, pp. 339-347.

[19] Id., pp. 347A-350.

[20] TSN, pp. 20-23, Sept. 13, 1994.

[21] Records, pp. 367-371.

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