

ROSALIA P. SALVA AND HER CHILDREN JESUS RAMON SALVA, JOSE ALBERTO SALVA, MELCHOR LEON SALVA, ALFREDO FAUSTO SALVA, JR., MA. TERESITA SALVA YUMANG, MA. ROSALYN SALVA, AND ANTHONY...

G.R. No. 132250. March 11, 1999

Ponente: PUNO, J.

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PUNO, J.:

Before us is a Petition for Review by Certiorari praying for the reversal and nullification of the Resolution[1] of the respondent Court of Appeals[2] in CA-G.R. SP No. 40430 which granted respondent Governor Josephine R. Sato's Motion for Reconsideration of its earlier Decision[3] which dismissed respondent's Petition for Certiorari and Prohibition[4] assailing an already final and executory decision for forcible entry of the Municipal Trial Court of San Jose, Occidental Mindoro.[5]

There is no dispute as to the facts of this case. Squatters' shacks mushroomed around the San Jose Airport in Occidental Mindoro and resulted to its closure. As the shutdown of airport operations severely affected the commercial life of the province, officials of the province, led by respondent, initiated measures to re-open the airport.

The squatters had to be relocated. Thus, the Sangguniang Bayan of the Municipality of San Jose passed Resolution No. 5210, Series of 1994, choosing Lot No. 1626-C-2 with an area of 59, 977 square meters covered by TCT No. T-5587 in the name of the National Food Authority (NFA), to be their relocation site.

The Department of Environment and Natural Resources surveyed and subdivided the vacant space on the NFA lot. In the resulting survey and subdivision, certain areas were marked off as containing residential structures which were constructed, not by the NFA which owned the land, but by herein petitioners.

After the implementation of the relocation program on the NFA lot, petitioners filed with the Municipal Trial Court a Complaint for Forcible Entry against the relocated families and respondent. The Complaint was docketed as Civil Case No. 1425 and amended[6] on July 21, 1994.

In support of the allegations in their Complaint, petitioners offered as evidence numerous affidavits[7] of their neighbors attesting to their actual, physical and notorious possession of the NFA land for more than thirty (30) years, photographs[8] of their houses, poultry sheds and plantations on the NFA land, and various realty tax declarations and realty tax receipts[9] in the name of petitioners covering said land.

Respondent filed her Answer to petitioners' Complaint but she neither submitted any affidavits of her witnesses nor presented any other evidence during the trial.

On October 7, 1994, the Municipal Trial Court, through the Honorable Judge Inocencio M. Jaurigue, rendered judgment against respondent Governor Sato and the relocated families who were found to have unlawfully

entered the disputed property at the time it was actually possessed and occupied by herein petitioners. Thus the dispositive portion of that judgment ordered them to:

- "1. Vacate the land subject matter of the complaint and to return the peaceful possession of the same to the plaintiffs [herein petitioners] or their representative;
2. Jointly and severally pay to plaintiffs [herein petitioners] the sum of twenty five thousand (P25,000.00) pesos for and as attorney's fee;
3. Jointly and severally pay to plaintiffs the sum of five thousand (P5,000.00) pesos a month as rental value of the premises, starting July 1994 until the possession thereof is returned to the plaintiffs [herein petitioners], and
4. Jointly and severally pay to plaintiffs [herein petitioners] the sum of three thousand (P3,000.00) pesos for and as litigation and other incidental expenses and cost."

Respondent appealed to the Regional Trial Court of San Jose. The appeal was docketed as Civil Case No. R-879 and raffled to Branch 45.

Before the Regional Trial Court, respondent claimed that the parcel of land being occupied by petitioners was different from that allocated as relocation site. To resolve this issue, the Honorable Judge Fernando Z. Caunan conducted an ocular inspection of the lot where all parties were represented. Also present were the officers of the Municipal Planning and Development Council and the Engineer's Office. The relocated squatters were called and asked to confirm whether or not they have actually entered the property in question.

The following are the pertinent findings of the Regional Trial Court:

"In the course of the ocular inspection, it was ascertained that a total of thirty one (31) persons named in the complaint and in the decision of the lower court x x x did not enter the premises in question and they were not found therein at the time of the ocular inspections. Neither was there any showing that they introduced any improvements thereon.

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In its memorandum, appellants [among whom is herein respondent] contend that the area being claimed by the appellees [herein petitioners] is different from the area entered and occupied by the appellants [i.e., the relocated families] and that the appellees [petitioners] are not the owners of said parcel of land. In this connection, as correctly observed by the lower court, the plaintiffs-appellees [herein petitioners] were in the actual physical possession of the said property until they were forcibly dispossessed by the defendants, appellants herein [including herein respondent] of said land on July 5, 1994. These findings of the lower court were confirmed in the ocular inspection of the area conducted on February 9, 1995. And, as correctly pointed out by the lower court, the only issue in this case, is the actual physical possession of the land subject matter of the complaint. Such possession had been sufficiently shown to have been with the plaintiffs at the time of the forcible entry of the defendants."

Accordingly, the Regional Trial Court affirmed the Judgment of the Municipal Trial Court but voided it with respect to the thirty one (31) defendants, who were found to have never been relocated to the property in question.

On March 27, 1995, respondent filed a Notice of Appeal from the foregoing Decision. It was approved by the Regional Trial Court in an Order dated April 3, 1995. The appeal was assigned to the Special Thirteenth Division^[12] of the Court of Appeals and docketed as CA-G.R. CV No. UDK-3880-A. For adopting a wrong mode of appeal, however, respondent was rebuffed. Her petition was dismissed pursuant to Section 22, Batas Pambansa Blg. 129 and Circular No. 2-90^[13] in a Resolution^[14] dated October 9, 1995.

The period for appeal lapsed on January 4, 1996 without respondent filing a Motion for Reconsideration on the

foregoing Resolution or seeking its review by this Court through a petition for review on certiorari under Rule 45.

Thus, on January 10, 1996, the Court of Appeals ordered that entry of judgment be issued and that the records of that case be returned to the Municipal Trial Court for execution.[15] Entry of judgment was promptly made on January 24, 1996.

On March 25, 1996, the Municipal Trial Court issued a Writ of Execution for the enforcement of its Decision in Civil Case No. 1425 as affirmed by the Regional Trial Court and the Court of Appeals.[16]

On April 24, 1998, respondent filed a Petition for Certiorari and Prohibition with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order.[17] She prayed that the Municipal Trial Court be enjoined from implementing its final and executory Decision in Civil Case No. 1425 and that the same be declared null and void for having been issued in grave abuse of discretion. The petition was docketed as CA-G.R. SP No. 40430.

On October 22, 1996, respondent Court of Appeals rendered a Decision[18] dismissing the Petition for Certiorari and Prohibition for having been filed as a substitute for a lost appeal. It held:

"The well-settled rule, buttressed and strengthened by [a] long line of cases, is that certiorari will not lie as substitute for the lost remedy of appeal. Having lost the right to appeal, a party cannot be permitted to avail of the remedy of certiorari under Rule 65 of the Rules of Court.

The only exception to this rule is when if [sic] such right is lost through no fault of the party, which is not so in this case.

When the case was dismissed by this Court, petitioner did not bother to file a motion for reconsideration or petition for review to the Supreme Court. Petitioner just allowed the period to appeal to lapse.

Consequently, this petition must fail for this petition was indeed filed as a substitute for the lost right to appeal." [19]

Respondent Court of Appeals went further. It discussed the untenability of respondent's rehashed argument that petitioners did not have prior possession of that portion of the NFA land earmarked as the relocation site. It ruled:

"The main argument of petitioner to support her petition is that the site where [the] relocated families stayed is not the land being occupied and possessed by private respondent. Thus, it cannot be said that private respondents were deprived of their property.

We do not agree with petitioner.

In this case, it has been proven that the relocated families forcibly entered the land being occupied by private respondents.

The Municipal Trial Court found that private respondents were in actual physical possession of the land where the squatter families were relocated. The Regional Trial Court affirmed the findings. In fact, an ocular inspection was even conducted by the public respondent to fully appraise himself of the situation and it was confirmed that private respondents were in actual physical possession of the land where the squatter families were relocated. x x x

It is a well settled rule that the findings of fact of trial courts are given great weight on appeal because they are in a better position to examine the real evidence. Findings of fact of a trial court are not to be disturbed on appeal unless the trial court has overlooked, ignored or disregarded some facts or circumstance of weight or significance which if considered would have altered the case.

In this case, We find no reason to disturb the findings of the trial court.

It cannot be argued that the municipal trial court and the appellate court (RTC) overlooked the fact that private respondents were claiming to have occupied Lot 1626-A while the site where the families were relocated is Lot 1626-C-2.

Whatever may be the number of the lot is no longer important in this case. Evidence clearly appears that the squatter families entered and occupied the land which was then in actual physical possession of private respondents. Whether it be Lot 1626-A or 1626-C, the fact remains that the squatter families occupied a land then in possession of private respondents.

x x x

Moreover, petitioner in her answer before the Municipal Trial Court categorically admitted that the squatter families entered the land owned by NFA and that this land which is owned by NFA is in possession of private respondents. Petitioner averred:

"x x x

x x x [T]he act of a possessory character done by the Plaintiffs, by virtue of mere tolerance on the part of the National Food Authority, is not sufficient x x x.

At this stage, petitioner can no longer insist that private respondents are exercising acts of possessory character over a land different from that land given to the squatter families.

Although admittedly, petitioner may validly claim ownership based on the muniments of title she presented, such evidence however does not responsively address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of the actual condition of the title of the property, the party in peaceful, quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession can recover such possession even against the owner himself.

Therefore, whatever may be the character of private respondents' prior possession, whether it be legal or illegal, since they had in their favor priority in time, private respondents have the security that entitles them to remain on the property until they are lawfully ejected by a person having a better right by accion publiciana or accion reivindicatoria." [20]

On November 12, 1996, respondent filed a Motion for Reconsideration. [21] On January 12, 1998, respondent Court of Appeals reversed itself. It granted respondent's Motion for Reconsideration and dismissed petitioners' Complaint for Forcible Entry in Civil Case No. 1425. It justified its volte-face in this wise:

"The motion [for reconsideration] is principally anchored on her contention that certiorari is the proper recourse from the assailed decisions which are 'patently null and void' in that the lot occupied by private respondents is different from the land set aside by the provincial government for relocation purposes.

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As a general rule, certiorari will not lie as a substitute for a lost appeal. However, as correctly pointed out by petitioner, there are some recognized exceptions to the rule. Thus, certiorari has been accepted as a substitute for a lapsed appeal where the equities warrant such recourse and dismissal was based on technicalities; or where rigid application of the rule will result in a manifest failure or miscarriage of justice x x x or where the orders of the lower court were issued either in excess of [or] without jurisdiction x x x.

xxx

In this connection, it is worthy to note that this case arose out of the relocation of squatters who used to live within the vicinity of the San Jose airport in Mindoro Occidental. Their immediate relocation was of paramount importance to re-open the airport and ensure their safety as well as that of airplane passengers. As

we had earlier pronounced, petitioner's act in relocating the squatters was 'noble'. x x x

Thus the ends of justice and the greater good of the community would be better served if the case is decided on the merits and the petition be given due course.

Anent petitioner's second argument, we agree with her that a determination of the lot used as a relocation site vis-a-vis that of the area occupied by private respondents is material to the case. Although this issue was properly raised in petitioner's answer to the complaint, this issue was not addressed by the municipal trial court. An ocular inspection should have been conducted by the trial court to ascertain the said issued [sic]. And to complicate matters, the RTC was the one which conducted the ocular inspection. Although the RTC likewise failed to resolve the issue, in conducting the ocular inspection however, the RTC clearly went beyond its jurisdiction because in this case, it was acting in its appellate jurisdiction and should have decided the appealed case solely on the basis of the evidence submitted or presented before the Municipal Trial Court, without anymore receiving new or additional evidence from the parties.

x x x

A judicious scrutiny of the assailed decisions would reveal that both courts skirted or simply brushed aside the point raised by petitioner that the squatters were relocated on a different lot. x x x [S]ince in ejectment cases the only issue to be determined is who had actual prior possession of the property, it is of utmost importance that the lot being claimed by the petitioner is first identified, otherwise the court can not assume jurisdiction over the case, if the lot claimed by the petitioner is different from that occupied by the relocated squatters. This identification was not done by the Municipal Trial Court x x x.

Further, even granting arguendo that the lot occupied by private respondents and the relocation site is [sic] the same, it is not disputed that the said relocation site is titled in NFA's name. In such a case, private respondents would then be occupying a portion of said lot by mere tolerance of NFA. When the squatters were then relocated to a vacant portion of said lot, it cannot be said that private respondents were deprived of their possession or forcibly ejected therefrom. NFA as the titled owner of the said property had every right to allow other people to also occupy the unused or vacant portion of its lot and private respondents have no right, as mere squatters thereon, to allocate for themselves the entire property and deprive its legitimate owner of its right to use the property.

x x x"[22]

On March 17, 1998, the instant Petition for Review by Certiorari was filed by petitioners Rosalia P. Salva and her children, Jesus Ramon, Jose Alberto, Melchor Leon, Alfredo Fausto, Jr., Ma. Teresita, Ma. Rosalyn and Anthony Ralfth, against respondent Governor Josephine R. Sato.

Petitioners pray for this Court to set aside the Resolution dated January 12, 1998 issued by the respondent Court of Appeals and to reinstate its Decision dated October 22, 1996 on the following grounds:

"A

"THE PETITION FOR CERTIORARI FILED BY RESPONDENT SATO WAS PROPERLY DENIED AS A WRONG REMEDY IN THE DECISION DATED OCTOBER 22,1996 AND THE RESPONDENT COURT GRAVELY ERRED IN ACCEPTING THE SAME UNDER THE ALLEGED RECOGNIZED EXCEPTIONS OF THE RULE THAT CERTIORARI WILL NOT LIE AS A SUBSTITUTE FOR A LOST APPEAL.

"B

"THE RESPONDENT COURT ERRONEOUSLY ASSUMED, WITHOUT PROPER AND LEGAL EVIDENCE PROVING SUCH ASSUMPTION, THAT RESPONDENT SATO-S CO-DEFENDANTS ARE ACTUALLY OCCUPYING LOT 1626-C-2 TITLED UNDER THE NAME OF THE NATIONAL FOOD

AUTHORITY (NFA).

"C

"SINCE OVERWHELMING EVIDENCES HAVE BEEN PRESENTED PROVING PREVIOUS ACTUAL POSSESSION OF THE LAND IN QUESTION, FORCIBLE ENTRY WAS PERPETRATED BY RESPONDENT SATO AND HER CO-DEFENDANTS WHOSE STAY IN THE PREMISES IN QUESTION CONTINUOUS [sic] TO BE AN ILLEGAL ACT OF TRESPASS AND SPOLIATION."

We grant the petition.

First. The respondent Court of Appeals gravely abused its discretion when it reversed its original decision to uphold the validity of the Municipal Trial Court judgment which had already become final and executory. The filing of a petition for certiorari to nullify and set it aside was without procedural sanction. As we have held in *Amigo v. Court of Appeals*:^[23]

"The Court must remind the parties that the case brought up to the Court of Appeals is an extraordinary action that has sought to annul the writs of execution and demolition issued under and by virtue of a final judgment that is alleged to be void for want of jurisdiction. The petition should not thus be used as a strategem to once again reopen the entire controversy and make a complete force of a duly promulgated decision that has long become final and executory x x x."^[24]

It is a settled rule that a judgment which has acquired finality becomes immutable and unalterable, hence may no longer be modified in any respect except only to correct clerical errors or mistakes. Once a judgment becomes final, all the issues between the parties are deemed resolved and laid to rest.^[25] Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.^[26]

Second. In granting the Motion for Reconsideration filed by respondent Governor Sato, the respondent Court of Appeals made the finding that she brought the airport squatters to settle on Lot 1626-C-2, not on Lot 1626-A-2 which is the one claimed by petitioners. This important finding of fact is totally devoid of evidentiary support for respondent Governor Sato did not present any evidence on this issue. All the respondent appellate court had were the bare allegations of respondent Governor Sato in her Motion for Reconsideration which was even unverified. Allegations can never be considered as repositories of truth, and hence cannot serve as foundations of decisions resolving rights of litigants.

Respondent Court of Appeals took to task the Municipal Trial Court for having dodged the issue of identity of the subject property. The Regional Trial Court, in exercise of its appellate jurisdiction, squarely addressed said issue. It took decisive steps to determine the identity of both the subject property and its actual occupants at the time that respondent -relocated the airport squatters. The Regional Trial Court went to the actual relocation site to survey the area and called each of the defendants named in petitioners' complaint for ejectment. Its findings categorically established that the relocation site and the land occupied by petitioners are identical. They are one and the same, and petitioners were found to have indeed possessed the same at the time it was taken over by respondent and the airport squatters. Significantly, respondent never denied the holding of this ocular inspection where all parties were represented. Certainly, between these strongly substantiated and undisputed findings of a court that obtained first hand knowledge of the issues of the identity of the disputed lot and its prior possessors, and the unproved allegations in an unverified motion for reconsideration of the respondent Sato on the other, the former instead of the latter ought to have been adopted by the Court of Appeals.

Third. The unsubstantiated claim that respondent Sato relocated the airport squatters to Lot 1626-C-2, not on Lot 1626-A-2 which petitioners occupy, is further attenuated by her equally unproved allegation that petitioners were occupants of the disputed land by mere tolerance of its owner. Again in grave abuse of discretion, respondent Court of Appeals swallowed this stance of respondent as it even branded petitioners as "squatters".

It is self-evident that in the first place, these two claims equally asserted by respondent are contradictory to each other. Petitioners either occupied the disputed land or not. They cannot be said to have simultaneously possessed and not possessed the same. The lower courts resolved the issue in favor of petitioners, for not only did respondent fail to proffer any convincing proof of any of its submissions, but more importantly, petitioners submitted overwhelming proof of their prior possession of the subject property. Extant on the record are the following evidentiary documents:

- Exh. A - Affidavit of Rosalia P. Salva dated September 9, 1994
- Exh. B - Supplemental Affidavit of Rosalia Salva dated September 16, 1994
- Exh. C - Sworn Statement of Melchor Leon Salva dated September 9, 1994
- Exh. D - Sworn Statement of Pablo Dulay dated September 9, 1994
- Exh. E - Sworn Statement of Perlita Gran dated September 9, 1994
- Exh. F - Joint sworn statement of Perlita Aguilar and Joel Antaran dated September 12, 1994
- Exh. G - Sworn statement of Marcelo Abeleda dated September 12, 1994
- Exh. H - Sworn Statement of Luz Jimenez dated September 9, 1994
- Exh. I - Close-up picture of the house of plaintiffs inside the area in question, wherein the picture of the late husband Alfredo Salva appeared
- Exh. I-1 - Picture of the portion of the area, showing petitioners' house, the fruit bearing trees and the farmland
- Exh. I-2 - Picture of the area, showing some growing trees which were destroyed and cut by the defendants
- Exh. I-3 - Picture of the barb wire fence which was destroyed by the defendants
- Exh. I-4 - Another picture of the area with fence
- Exh. I-5 - Another picture
- Exh. I-6 - Another picture showing the poultry house
- Exh. I-7 - A picture showing the banana plantation
- Exh. I-8 - A picture of the area with picture of the late Alfredo Salva
- Exh. J - Receipt of payment for survey authority dated January 21, 1989 issued by Feliciano Cayayon
- Exh. K - Realty Tax Receipt No. 9157617 dated April 4, 1975
- Exh. L - Realty Tax Receipt No. 015703 dated April 4, 1975
- Exh. M - Realty Tax Receipt No. 6452423 dated March 3, 1978
- Exh. N - Realty Tax Receipt No. 645309 dated March 3, 1978
- Exh. O - Realty Tax Receipt No. 9059517 dated September 18, 1980

Exh. P - Sketch plan prepared for Alfredo Salva by Engr. Tomas Abella dated Nov. 15, 1969

Exh. Q - Realty Tax Declaration No. 10156 dated October 22, 1976

Exh. Q-1 - Another Realty Tax Declaration NO. 10157 dated October 22, 1976

Exh. R - Unapproved survey plan of the area occupied by the petitioners since May 21, 1979

Exh. S - Certification issued by CENRO dated September 5, 1994

Exh. T - Official Receipt for payment of certification fee dated September 5, 1994

Exh. U - MTC Lease Application dated September 26, 1978

As the records of this case bear out, respondent never repudiated any of these documents. She failed not only to present evidence to support her claims but also to cast doubt on the veracity of petitioners' claims.

Fourth. There is no justifiable reason for the respondent Court of Appeals to junk the entrenched rule that certiorari is not a substitute for a party's failure to appeal.[27] While there are exceptions to this rule, this case fails to distinguish itself as one. We made it clear in the case of *Oriental Media, Inc. v. Court of Appeals*,[28] thus:

"Oriental fell into and committed serious procedural lapses which resulted not only in the decision of default becoming final and executory but also in the order dismissing the petition for relief from judgment likewise attaining the character of final and executory order, for which reason both are now beyond the reach and review of any appellate court.

x x x

We have reiterated in many cases that certiorari is not a substitute for appeal x x x especially a lost appeal. Certiorari should not be allowed where the petitioner has-or had--other remedies available x x x. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive x x x.

Surely, there are cases, where certiorari was allowed although appeal was the proper remedy. The Court has in a number of cases given due course to a petition for certiorari although the proper remedy is appeal especially where the equities warrant such recourse and considering that dismissals on technicalities are viewed with disapproval x x x. Where an appeal would not be an adequate remedy under the circumstances, since it would not promptly relieve the petitioner from the injurious effects of the acts of the inferior court or tribunal, e.g., the court has authorized execution of the judgment, a resort to the special civil action of certiorari may exceptionally be allowed x x x, especially so if the petition is filed while the period for appeal has not expired.

x x x

x x x [P]etitioner squandered its opportunities to question and assail the decision dated July 8, 1986 of the trial court and the order dated February 24, 1987 of the trial court dismissing its petition for relief from judgment. Petitioner, as aforesaid, filed a motion for reconsideration of the decision dated February 24, 1987, which was denied by the trial court in its order dated October 9, 1986. After receiving the denial order, petitioner did not avail itself of the right to appeal; rather, a petition for relief from judgment was filed and when said petition was dismissed in the order of February 24, 1987, petitioner did not interpose an appeal therefrom which it had every right to do so. It is now much too late in the day to resort to the present petition to set aside said decision and orders which have become final and executory."[29]

Fifth. Respondent insists that while it is true that a petition for certiorari is not proper where appeal was available, the failure to appeal was not her fault.

In her Comment dated August 6, 1998, respondent blamed her former counsel for everything that went wrong in this case. According to her, it was her former counsel who, in the course of the proceedings before the Municipal Trial Court, failed to present any evidence of petitioners' non-occupation of Lot 1626-C-2 earmarked as the relocation site. It was also her former counsel who erroneously filed a Notice of Appeal instead of a Petition for Review in elevating the Decision of the Regional Trial Court to the Court of Appeals. When the Court of Appeals dismissed the same for being a wrong mode of appeal, it was also her former counsel who failed to file a motion for reconsideration or to elevate such dismissal to this Court on petition for review via certiorari.

Citing our 1991 decision in the case of *Legarda v. CA*,^[30] respondent Governor Sato argued that she should not be made to suffer for the mistakes and omissions of her former counsel. The respondent governor claimed that the reckless and gross negligence of her counsel was of such degree as to have deprived her constituency, namely, the Province of Occidental Mindoro, its rightful day in court.

Respondent's reliance on *Legarda* is inapropos. Notably, the decision in said case was not yet final in 1991. The private respondent therein then filed a timely motion for reconsideration. In granting the motion for reconsideration, the Court en banc held:

"Under the *Gancayco* ruling, the order of reconveyance was premised on the alleged gross negligence of *Legarda's* counsel which should not be allowed to bind her as she was deprived of her property without due process of law.'

It is, however, basic that as long as a party was given the opportunity to defend her interests in due course, she cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. The chronology of events shows that the case took its regular course in the trial and appellate courts but *Legarda's* counsel failed to act as any ordinary counsel should have acted, his negligence to act as an ordinary counsel should have acted, his negligence every step of the way amounting to 'abandonment', in the words of the *Gancayco* decision. Yet, it cannot be denied that the proceedings which led to the filing of this case were not attended by any irregularity. The judgment by default was valid, so was the ensuing sale at public auction. If *Cabrera* was adjudged highest bidder in said auction sale, it was not through any machination on his part. All of his actuations that led to the final registration of the title in his name were aboveboard, untainted by any irregularity.

x x x

Neither *Cathay* nor *Cabrera* should be made to suffer for the gross negligence of *Legarda's* counsel. If she may be said to be 'innocent' because she was ignorant of the acts of negligence of her counsel, with more reason are respondents truly 'innocent.' x x x In this case, it was not respondents, but *Legarda*, who misjudged and hired the services of the lawyer who practically abandoned her case and who continued to retain him even after his proven apathy and negligence."^[31]

At any rate, we find that respondent Governor Sato, as well as the Province of Occidental Mindoro which she represents, were not denied their day in court. Responsive pleadings were filed before the lower courts, and respondent was given all the opportunities to prove her case. Her chosen counsel did not diligently exhaust all legal remedies to advance respondent's cause, yet respondent did not terminate his services. She was aware of the repeated negligence of her counsel and cannot now complain of counsel's errors. Hence, there is no justifiable reason to exempt her from the general rule that clients should suffer the consequences of the negligence, mistake or lack of competence of the counsel whom they themselves hired and had the full authority to fire at any time and replace with another even without any justifiable reason.^[32]

Sixth and finally. Ultimately, amidst its contradictory arguments and dubious premises, respondent Court of Appeals anchored its reversal of its original decision on the tardy submission of respondent that the decisions of

the Municipal Trial Court and the Regional Trial Court were void ab initio for want of jurisdiction.

We have carefully studied the complaint for ejectment, however, and find the same to be in order. It is settled that jurisdiction is conferred by law based on the facts that are alleged in the complaint[33] since the latter comprises a concise statement of the ultimate facts constituting the plaintiff's causes of action.[34] There is no question that based on the allegations in petitioners' Amended Complaint, their cause of action is for forcible entry and its exclusive jurisdiction is vested in the Municipal Trial Court of San Jose, Mindoro.

We note that in the Answer of respondent to petitioners' Amended Complaint, she never raised the issue of jurisdiction. During the pre-trial, the issue of lack of jurisdiction was not also raised. In respondent's appeal to the Regional Trial Court, she also never brought to fore the issue of jurisdiction. When petitioner's appeal was dismissed by the Court of Appeals, she did not elevate the case to the Supreme Court on the ground of lack of jurisdiction; in fact, she allowed the period to appeal to lapse and the Decision of the Municipal Trial Court to become final and executory.

In a long line of decisions, this Court has consistently held that while an order or decision rendered without jurisdiction is a total nullity and may be assailed at any stage, a party's active participation in the proceedings in the tribunal which rendered the order or decision will bar such party from attacking its jurisdiction.[35] So we held in the leading case of *Tijam v. Sibonghanoy*: [36]

"A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppel in pais, or estoppel by deed or by record, and of estoppel by laches.

x x x

The doctrine of laches or of 'stale demands' is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

It has been held that 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 x x x. x x x [T]he 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.

x x x

Upon this same principle is what We said x x x to the effect that we frown upon the 'undesirable practice' of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse x x x." [37]

Public policy dictates that this Court must strongly condemn any double-dealing, by parties who are disposed to trifle with the courts by taking inconsistent positions, in utter disregard of elementary principles of right dealing and good faith.[38] This applies not only to parties who are plaintiffs, complainants or others who initiated the case by actually filing the action, but also to parties who are defendants or respondents, if the latter fail to timely raise the jurisdictional issue and instead actively participate in the proceedings.[39]

There is no denying that in all the proceedings held in the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals, the issue of jurisdiction was never raised by respondent Governor Sato. Instead, she voluntarily and willingly submitted herself to the jurisdiction of those courts. It is thus now too late in the day for respondent

to repudiate those very courts whose jurisdiction she invoked.

WHEREFORE, the Petition for Review is hereby GRANTED. The Resolution dated January 12, 1998 rendered by the Court of Appeals in CA-G.R. SP No. 40430 is REVERSED AND SET ASIDE and its Decision dated October 22, 1996 is REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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- [1] Penned by Associate Justice Eugenio S. Labitoria and dated January 12, 1998, Rollo, pp. 37-46.
- [2] Former Sixteenth Division composed of Associate Justices Cancio C. Garcia, Eugenio S. Labitoria, and Artemio G. Tuquero.
- [3] Penned by Associate Justice Eugenio S. Labitoria and dated October 22, 1996, Rollo, pp. 26-35.
- [4] Dated April 23, 1996, Rollo, pp. 47-81.
- [5] Civil case No. 1425.
- [6] Amended Complaint dated July 20, 1994, Rollo, pp. 108-112.
- [7] Rollo, pp. 120-127.
- [8] Id., at pp. 128-130.
- [9] Id., at pp. 131-143.
- [10] Decision of the Municipal Trial Court dated October 7, 1994, p. 6, Rollo, p. 150.
- [11] Decision of the Regional Trial Court dated March 6, 1995, pp. 3-4, Rollo, pp. 199-200.
- [12] Composed of Associate Justices Ramon U. Mabutas, Jr., Romeo A. Brawner and Salvador J. Valdez, Jr.
- [13] Decision of the Court of Appeals dated October 22, 1996, p. 4, Rollo, p. 29.
- [14] Penned by Associate Justice Salvador J. Valdez, Jr.
- [15] Comment/Answer of respondents in CA-G.R. SP No. 40430 dated May 9, 1996, p. 12, Rollo, p. 96.
- [16] Decision of the Court of Appeals, *supra*.
- [17] Dated April 23, 1996, Rollo, pp. 47-82.
- [18] Rollo, pp. 26-35.
- [19] Decision of the Court of Appeals, *supra*.
- [20] Id., at pp. 5-8, pp. 30-33. Underscoring supplied by the Court of Appeals.
- [21] Rollo, pp. 161-177.
- [22] Resolution of the Court of Appeals dated January 12, 1998, pp. 1, 3-6, Rollo, pp. 37, 39-42.

[23] 253 SCRA 382 (1996).

[24] *Id.*, at p. 388.

[25] *Korean Airlines Co., Ltd. v. Court of Appeals*, 247 SCRA 599, 604 (1995), citing *Lim v. Jabalde*, 172 SCRA 211, 223 (1989).

[26] *Lim v. Jabalde*, 172 SCRA 211, 224 (1989), citing *Banogon v. Serna*, 154 SCRA 593, 597 (1987).

[27] *Manila Electric Company v. La Campana Food Products, Inc.*, 247 SCRA 77, 84 (1995); *Aqualyn Corporation v. Court of Appeals*, 214 SCRA 307, 312 (1992); *Salas v. Castro*, 216 SCRA 198, 202, 206 (1992); *Federation of Free Workers v. Inciong*, 208 SCRA 157, 164 (1992); *Dulos v. Court of Appeals*, 188 SCRA 413, 419 (1990); *Vivo v. Reyes*, 95 SCRA 81, 83 (1980); *Manila Electric Company v. Court of Appeals*, 187 SCRA 200, 205 (1990).

[28] 250 SCRA 647 (1995).

[29] *Id.*, at pp. 651-653, 656.

[30] 195 SCRA 418 (1991).

[31] *Legarda v. Court of Appeals*, 280 SCRA 642, 657, 659 (1997).

[32] *Five Star Bus Co., Inc. v. Court of Appeals*, 259 SCRA 120, 127 (1996); *B.R. Sebastian Enterprises, Inc. v. Court of Appeals*, 206 SCRA 28, 39 (1992), citing *Manila Electric Co. v. Court of Appeals*, 187 SCRA 200 (1990); *Tupas v. Court of Appeals*, 193 SCRA 597, 600 (1991), citing *Aguila v. Court of Appeals*, 160 SCRA 357 (1988); *Alabanzas v. Intermediate Appellate Court*, 204 SCRA 304, 308 (1991), citing *Vivero v. Santos*, 52 O.G. 1424.

[33] *Amigo v. Court of Appeals*, 253 SCRA 382, 389 (1996); *Bernarte v. Court of Appeals*, 263 SCRA 323, 338 (1996); *Javelosa v. Court of Appeals*, 265 SCRA 493, 499 (1996); *Isidro v. Court of Appeals*, 228 SCRA 503, 508-509 (1994); *Multinational Village Homeowners' Association, Inc. v. Court of Appeals*, 203 SCRA 104 (1991).

[34] *Bernardo, Sr. v. Court of Appeals*, 263 SCRA 660, 671 (1996), citing Sec. 3, Rule 6, Revised Rules of Court.

[35] *Romualdez v. RTC, Br. 7, Tacloban City*, 226 SCRA 408, 414 (1993), citing *Aquino v. Court of Appeals*, 204 SCRA 240 (1991); *Salen v. Dinglasan*, 198 SCRA 623 (1991); *Tijam v. Sibonghanoy*, 23 SCRA 29 (1968); *Jimenez v. Macaraig*, 219 SCRA 230, 238 (1993), citing *Finman General Assurance Corp. v. Salik*, 188 SCRA 740 (1990); *Suarez v. Court of Appeals*, 186 SCRA 339 (1990); *tan Boon Bee & Co., Inc. v. Jarencio*, 163 SCRA 205 (1988); *Tejones v. Ginorella*, 159 SCRA 100 (1988); *Balais v. Balais*, 159 SCRA 37 (1988); *Ong Ching v. Ramolete*, 51 SCRA 13 (1973); *Tolentino v. Escalona*, 26 SCRA 613 (1969).

[36] 23 SCRA 29 (1968).

[37] *Id.*, at pp. 35-36.

[38] *Jimenez v. Macaraig*, *supra*, at p. 239, citing *Crisostomo v. Court of Appeals*, 32 SCRA 54, 60 (1970); *People v. Archilla*, 1 SCRA 699, 700-701 (1961); *People v. Acierto*, 92 Phil. 534, 541 (1953).

[39] *Jimenez v. Macaraig*, *supra*, at p. 240, citing *Marquez v. Secretary of Labor*, 171 SCRA 337 (1989).

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