

SOCORRO CHUA, JUAN TUMALA, ESTELITA DIONISIO, SOLEDAD CUDERA, SEVERINO TAMAYO, AURELIO NAVA, EVELYN VILLANUEVA, CHRISTOPHER YANZA, ADELAIDA GONZALES, TEOFILO FERRERIA, AND AGAPI...

G.R. No. 132467. October 18, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is an “alternative petition for review on certiorari under Rule 45 of the Rules of Court, or a petition for certiorari under Rule 65 of the Rules of Court” for the reversal of the Resolution[1] of the Court of Appeals in CA-G.R. SP No. 46034, dismissing the petition for certiorari of the petitioners and the resolution of the appellate court denying their motion for reconsideration.

The Antecedents

Isabel C. Balles, who was married to Mariano Balles, was the owner of a residential land located in Scout Chuatoco Street, Barangay Paligsahan, Diliman, Quezon City, covered by Transfer Certificate of Title (TCT) No. 339356 issued by the Register of Deeds.[2] After the death of the spouses, TCT No. 339356 was cancelled by TCT No. ET-80465 issued under the names of their heirs, Benigno, Tomas, Norma, Manuel and Lawrence Balles.

In the meantime, on November 28, 1996, the registered owners, through counsel, filed a letter-complaint against the petitioners[3] for the demolition of houses and/or huts which stood on the property, alleged to have been constructed without the requisite building and occupancy permits from the City Building Office, and without the knowledge of the registered owners. The case was docketed as Case No. 97-12.

On March 31, 1997, Romualdo C. Santos, the Officer-in-Charge of the Office of the City Building Office, issued a Resolution ordering the petitioners to self-demolish their respective houses/huts within fifteen (15) days from notice thereof, with a warning that if they failed to comply with the resolution, the complainant will with force, effect the demolition at the expense of the respondents. The dispositive portion of the resolution reads:

Viewed in the light of the absence of building-occupancy permits, demolition of hereby structure is hereby ordered, being an illegal construction, structural hazards, no electrical, plumbing/sanitary permits secured for the structure, violative of the National Building Code.

Respondents are, therefore, ordered to self-demolish their structures within 15 days from receipt hereof, otherwise, demolition of the structures will be effected by the complainant, the expenses thereof charged to their account, without prejudice to the filing of appropriate cases for Illegal Construction/Occupancy with the City Prosecutor Office of Quezon City.[4]

On April 21, 1997, the petitioners filed a complaint for injunction and damages against Building Officer Romualdo C. Santos, and the registered owners of the property and their counsel in the Regional Trial Court of Quezon City, with a prayer for a temporary restraining order or a writ for preliminary injunction to enjoin the

demolition of their houses.

The petitioners alleged, inter alia, in the complaint that they had been occupying the property as lessees of Isabel Balles for more than ten years; after the demise of the Spouses Balles, they continued occupying the property as lessees, paying their rentals to Lawrence Balles, the only heir of the spouses who had constructed his house on the property; during the period that they had been in possession of the property, the registered owners never disturbed them of said possession; the respondent Romualdo C. Santos usurped the power of the judiciary by ordering the demolition of their houses/huts thereby impliedly ordering their eviction from the property; and by his action, respondent Santos deprived the petitioners of their constitutional rights to due process. The petitioners prayed that, after due hearing, they be granted the following reliefs:

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully pray that judgment be rendered:

- a) immediately ordering defendants to restrain defendants from implementing the unconstitutional and illegal resolution of respondent Santos in his capacity as OIC-Building Official dated March 31, 1997 and pending the trial on the merits that a restraining order be issued immediately enjoining defendant from enforcing the questioned resolution and after trial making the injunction permanent;
- b) Ordering defendants solidarily to pay plaintiffs solidarily (sic) the sum of P100,000.00 [for] exemplary damages; P100,000.00 as moral damages; P20,000.00 as attorney's fees and P1,000.00 as appearance fee for each day of hearing.
- c) Ordering defendants solidarily to pay the costs of this suit.

Plaintiffs further pray for such other reliefs and remedies as as (sic) just under the circumstances.[5]

However, on September 25, 1997, the trial court issued an Order[6] denying the petitioners' plea for a writ of preliminary injunction, relying on Section 301 of the National Building Code and Section 3.8 of Rule VII of the Implementing Rules of P.D. No. 1096. On November 4, 1997, the Building Official issued a Notice of Demolition.[7]

The petitioners filed a Petition for Certiorari in the Court of Appeals for the nullification of the September 25, 1997 Order of the trial court, and prayed for the issuance of a temporary restraining order/or writ of preliminary injunction. On November 28, 1997, the Court of Appeals issued a Resolution dismissing the petition on the following grounds:

- (1) The certification of non-forum shopping was signed merely by one (1) of the petitioners, and not by all of the petitioners, in violation of Section 3, Rule 46 of the 1997 Rules of Civil Procedure, as amended;
- (2) Petitioners failed to accompany the Affidavit of Service with a written explanation why service of a copy of the special civil action to private respondents were not personally made, in accordance with Section 11, Rule 13 of the Rules of Civil Procedure which requires that service pleadings shall be done personally whenever practicable;
- (3) Petitioners failed to ask for a reconsideration of the order of the respondent court, rendering the instant special civil action dismissible (*Santos v. Vda. De Cerdenola*, 5 SCRA 823; *Del Pilar Transit, Inc. v. Public Service Commission*; *D. C. Crystal, Inc. v. Laya*, 170 SCRA 734).[8]

The petitioners filed a motion for the reconsideration thereof on December 22, 1997 with a plea that the Rules of Court could be applied liberally in their favor. On January 15, 1998, the appellate court issued a Resolution[9] denying the said motion of the petitioners.

On January 19, 1998, the Asst. City Building Official issued an Order[10] reiterating his order for the demolition

of the houses/huts of the petitioners.

On February 4, 1998, the petitioners received a copy of the Resolution of the appellate court denying their motion for reconsideration.[11]

On March 23, 1998, the petitioners filed the “alternative petition” at bar contending that:

THE RESOLUTION OF THE COURT OF APPEALS DISMISSING THE PETITION FOR CERTIORARI AND INJUNCTION ON TECHNICAL GROUNDS AND DENIAL OF MOTION FOR RECONSIDERATION VIOLATED THE LIBERAL CONSTRUCTION OF RULES OF PROCEDURES AND IS AGAINST THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.[12]

...

THE QUESTIONED RESOLUTION AND NOTICE OF DEMOLITION WERE ILLEGAL AND UNCONSTITUTIONAL HAVING BEEN ISSUED, CAPRICIOUSLY, WHIMSICALLY WITHOUT EVIDENCE TO SUPPORT THE SAME AND AGAINST THE PROVISIONS OF P.D. 1096 AND RULE VII OF ITS IMPLEMENTING RULES.[13]

...

THE PRIVATE RESPONDENTS ARE GUILTY OF FORUM SHOPPING AND CIRCUMVENT JUDICIAL PROCEEDINGS TO EJECT PETITIONERS.[14]

...

PUBLIC RESPONDENT HON. JUDGE DIZON FAILED TO SEE THIS FORUM SHOPPING SCHEME OF PRIVATE RESPONDENTS AND GRAVELY ERRED AND ABUSED ITS DISCRETION IN DENYING THE PETITION FOR INJUNCTION EVEN WITHOUT HAVING COMPLETELY HEARD PETITIONERS AND PRIVATE RESPONDENTS AND DESPITE THE ILLEGALITY AND UNCONSTITUTIONALITY OF THE QUESTIONED RESOLUTION.[15]

...

THE SURPRISE PARTIAL DEMOLITION OF PETITIONERS’ HOUSES ON FEBRUARY 10, 1998 WITHOUT PREVIOUS NOTICES SENT TO PETITIONERS VIOLATED R.A. 7279 REQUIREMENTS ON DEMOLITION.[16]

...

PETITIONERS HAVE NOT VIOLATED P.D. 1096 BECAUSE THEIR HOUSES WERE ALREADY IN EXISTENCE LONG BEFORE THE NATIONAL BUILDING CODE TOOK EFFECT IN 1977.[17]

The petition has no merit.

The instant “alternative” petition is destined to fail. The petitioners cannot delegate upon the Court the task of determining under which rule the petition should fall. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[18] Under Rule 56, Sec. 5(f) of the Revised Rules of Court, a wrong or inappropriate mode of appeal, as in this case, merits an outright dismissal.

Every lawyer[19] should be familiar with the obvious distinctions between a special civil action for certiorari under Rule 65 and an appeal by petition for review on certiorari under Rule 45. For one, that under Rule 45 is a continuation of the judgment complained of, while that under Rule 65 is an original or independent. It is, likewise, settled that generally, the special civil action of certiorari under Rule 65 will not be allowed as a substitute for failure to timely file a petition for review under Rule 45 or for the lost remedy of appeal.[20]

Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[21] Under Rule 45, the reglementary period to appeal is fifteen (15) days from notice of judgment or denial of the motion for reconsideration.[22]

Here, the Resolution of the Court of Appeals dated January 15, 1998 denying the motion for reconsideration of its Resolution dated November 28, 1997 was received by petitioners on February 4, 1998.[23] Thus, they had until February 19, 1997 within which to perfect their appeal. The petitioners failed to do so. What they did was to file the instant petition, designating it in both the caption and the body as one for “Petition for Review on Certiorari under Rule 45 or Certiorari under Rule 65 and Injunction with Prayer for a Restraining Order,” reiterating the issues and arguments they raised before the Court of Appeals.

For the writ of certiorari under Rule 65 of the Rules of Court to issue, the petitioners must show that they have no plain, speedy and adequate remedy in the ordinary course of law against their perceived grievance. A remedy is considered “plain, speedy and adequate” if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only available but also a speedy and adequate remedy.[24]

Clearly, the petitioners interposed the present special civil action of certiorari as an alternative to their petition for review on certiorari not because it is the speedy and adequate remedy but to make up for the loss of the right of ordinary appeal. It is elementary that the special civil action of certiorari is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file a petition for review on certiorari under Rule 45 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one’s own neglect or error in the choice of remedies.[25] Although there are exceptions to these rules, among them are: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority,[26] none is present in the case at bar. The petitioners failed to show circumstances that would justify a deviation from the general rule as to make available a petition for certiorari in lieu of taking an appeal.

Based on the foregoing, the instant petition should be dismissed.

In any case, even if the issue of the petitioners’ lapses are brushed aside and recourse under Rule 65 is allowed, the same result would be obtained for the reason that the appellate court’s resolutions are in accord with the Rules of Court.

The Court of Appeals dismissed the petition for certiorari and injunction, among other grounds, that the certification of non-forum shopping was signed by only one of the petitioners.

Anent this ground, the petitioners submit that a relaxation of the rigid rules of technical procedure is called for since the objectives of the rule on certification of non-forum shopping had been substantially complied with. Citing jurisprudence, the petitioners aver that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and, thus, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.

We are not convinced.

Section 5, Rule 7, of the 1997 Rules of Civil Procedure expressly provides that it is the plaintiff or principal party who shall certify under oath the certification against forum shopping.[27]

In the petition for certiorari and prohibition in the Court of Appeals, the verification/certification[28] was signed only by petitioner Socorro Chua. There was no showing that petitioner Chua was authorized by her co-petitioners to represent the latter and sign the certification. It cannot likewise be presumed that petitioner Chua knew, to the best of her knowledge, whether her co-petitioners had the same or similar actions or claims filed or pending. We find that substantial compliance will not suffice in a matter involving strict observance by the rules. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. The petitioners must show reasonable cause for failure to personally sign the certification. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[29]

In view of the conclusions arrived at above, we deem it unnecessary to discuss the other issues raised in this case.

WHEREFORE, the petition is DENIED. The assailed resolutions of the Court of Appeals are AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Ramon A. Barcelona (retired) with Associate Justices Minerva P. Gonzaga-Reyes (later promoted as Supreme Court Justice) and Demetrio G. Demetria (both retired), concurring.

[2] Rollo, p. 40.

[3] Teofilo Ferreria, Trinidad Ferreria, Corazon Chua, Aurelio Nava, Agapito Dimalanta, the Spouses Ernesto and Aida Gonzales, Jovencio Yanza, Evelyn Dimalanta, Juan Tumala, Estela, Dionisio and Servillano Tamayo.

[4] Rollo, p. 42.

[5] Id. at 48.

[6] CA Rollo, pp. 35-36.

[7] Id. at 37.

[8] Rollo, pp. 73-74.

[9] Id. at 82.

[10] Id. at 83.

[11] Id. at 9.

[12] Id. at 19.

[13] Id. at 24.

[14] Id. at 27.

[15] Id. at 28.

[16] Id. at 30.

[17] Id. at 31.

[18] Tomas Claudio Memorial College, Inc. v. Court of Appeals, G.R. No. 152568, February 16, 2004.

[19] Circular No. 2-90, paragraph 4 (e) of the specifically warns litigant's counsel by providing the following:

Duty of counsel.- It is, therefore, incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

[20] Linzag v. Court of Appeals, 291 SCRA 304 (1998).

[21] Heirs of Marcelino Pagobo v. Court of Appeals, 280 SCRA 870 (1997).

[22] Section 1, Rule 45 of the Revised Rules of Court.

[23] Rollo, p. 9.

[24] National Irrigation Administration v. Court of Appeals, 318 SCRA 255 (1999).

[25] Ibid.

[26] Metropolitan Manila Development Authority v. JANCON Environmental Corp., 375 SCRA 320 (2002), citing Ruiz, Jr. v. Court of Appeals, 220 SCRA 490 (1993).

[27] SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[28] CA Rollo, p. 19.

[29] Loquias v. Office of the Ombudsman, 338 SCRA 62 (2000); Decena v. Lapesura, 355 SCRA 658 (2001).

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