

**ASUNCION MACIAS, SANTIAGO CORSAME, SEVERINA PIS-AN VDA.
DE MACIAS, RUFINA MACIAS, MARIONITO MACIAS, CERTERIA AMIL,
GIL-MO MACIAS, NIDA CORDURA, PASCUAL MACIAS, LIZEL
CATUBAY, SA...**

G.R. No. 139284. June 04, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 48188 which affirmed the Order[2] of the Regional Trial Court of Dumaguete City, Branch 31, denying the petitioners' Urgent Omnibus Petition, for the enforcement of the Intermediate Appellate Court's decision in AC-G.R. CV No. 58863-R and the resolution of the appellate court denying the motion for reconsideration of the petitioners.

The Antecedents

Potenciana Unto was the owner, in fee simple, of a parcel of land located in Dumaguete, identified as Lot No. 1496 of the Dumaguete Cadastre. Upon her death, the property was inherited by her daughter, Josefa Unto-Mendez, which in turn was later inherited by the latter's children, Ignacia, Fructuoso, Pio, Alfonso, all surnamed Mendez and one acknowledged natural child, Matias Unto. Ignacia Mendez died and was survived by her children, Domingo Lumakad and Eugenia Lumakad, who inherited her share of the property. Upon the death of Pio Mendez, his share was inherited by his children, Edmundo, Apolinario, Justiniano, Francisco, Conceda, Saturnino and Pilagia, all surnamed Mendez.

The property was titled in the names of Josefa Mendez and Matias Unto's children and grandchildren, under Original Certificate of Title (OCT) No. 23. Domingo Lumakad sold his share to Eugenia Mendez, the mother of Joaquin Unto, while Julian Mendez sold his share to Joaquin Unto and Victoriana Unto. Marciano Lumakad, another son of Domingo Lumakad, sold his share to Victoriana Unto and Melanio Unto. Francisco Mendez and Eugenia Lumakad, through her son, Leonardo Limpalu, sold their share to Matias Unto. The deeds of sale covering the transactions were not registered in the Office of the Register of Deeds, nor annotated at the back of OCT No. 23.

Sometime in 1968, Catalina Macias, the daughter of Alfonso Mendez, and her siblings Julian Mendez, Guillermo Macias, Nicasio Macias, Gualberto Macias, Leonora Macias, Asuncion and Teopista Macias, acquired the property through a deed of extrajudicial settlement executed by the owner of the property which was duly registered in the Register of Deeds. OCT No. 23 was cancelled by TCT No. 2714 which, in turn, was cancelled by TCT No. 2833 under the names of the buyers as owners of the property.

On August 21, 1968, Catalina Macias, for herself and acting for and in behalf of Guillermo, Nicasio, Gualberto, Leonora, Asuncion and Teopista, all surnamed Macias, executed a real estate mortgage over the property with the Central Savings & Loan Association (CSLA), as security for a loan of P3,800.00. The instrument was annotated

at the dorsal portion of TCT No. 2833 as Entry No. 8049.[3]

On August 27, 1968, Julian Mendez, through his attorney-in-fact, mortgaged his undivided share of the above property also with the CSLA, as security for a loan of P1,000.00. The real estate mortgage was annotated as Entry No. 8074 at the dorsal portion of the said title.[4]

On September 18, 1968, Joaquin Unto and Victoriana Unto Vda. de Macias (plaintiffs, for brevity) filed a complaint for reconveyance and cancellation of TCT No. 2833 covering Lot No. 1496 against Catalina Macias, Guillermo Macias, Nicasio Macias, Gualberto Macias, Leonora Macias, Teopista Macias and the CSLA with the then Court of First Instance of Negros Occidental, Branch 1.[5] The plaintiffs alleged, inter alia, in their complaint that they were the owners of 5/8 portion of Lot No. 1496 of the Dumaguete Cadastre with an area of 13,282 square meters covered by OCT No. 23, and were in actual possession thereof. They also alleged that the real estate mortgages executed by the private individuals in favor of the CSLA were fraudulent; hence, void. The plaintiffs prayed that, after due hearing, judgment be rendered in their favor, thus:

WHEREFORE, for the foregoing consideration, the Honorable Court is respectfully prayed to render judgment for plaintiffs and against the defendants, viz:

- (1) Declaring the series of fraudulent transfer made by Catalina Macias for portions of Lot No. 1496 previously sold to plaintiff as null and void;
- (2) Ordering defendant Catalina Macias to reconvey to plaintiffs the five-eighths (5/8) shares of Lot No. 1496 owned by them which were sold to them by the original owners;
- (3) Ordering the cancellation of the mortgage by defendant to the Central Loans and Savings Association;
- (4) Ordering defendant Catalina Macias to pay to plaintiffs the sum of P10,000.00 for moral damages and such exemplary damages as the Honorable Court may award;
- (5) Ordering defendant Catalina Macias to pay to plaintiffs the sum of P1,000.00 for attorney's fees and the costs of suit;
- (6) Granting unto plaintiffs such other relief as the Honorable Court may deem proper and just under the premises.[6]

The case was docketed as Civil Case No. 4823.

On November 13, 1968, the plaintiffs caused the annotation of a Notice of Lis Pendens relating to Civil Case No. 4823, Entry No. 8465, at the dorsal portion of TCT No. 2833.[7]

In the meantime, Catalina Macias, et al., paid their loan to the CSLA. As a result, Entry No. 8049 on TCT No. 2833 was cancelled on August 14, 1969. However, Julian Mendez failed to pay his loan. Thus, the mortgagee caused the extrajudicial foreclosure of the real estate mortgage over his undivided share of the property. A sheriff's certificate of sale was executed by the sheriff in favor of CSLA. The deed was annotated on May 20, 1971 at the dorsal portion of TCT No. 2833, as Entry No. 12801.[8]

On November 10, 1975, the court rendered its Decision[9] in Civil Case No. 4823 dismissing the complaint, the decretal portion of which reads as follows:

FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the defendants and against the plaintiffs:

- 1) Dismissing plaintiffs' complaint;

2) Declaring defendants, surnamed Macias, the true and lawful owners of three-fourths (3/4) undivided shares of Lot No. 1496 of the Cadastral Survey of Dumaguete City, as registered in their respective names in Transfer Certificate of Title No. 2833; and ordering the plaintiffs to deliver the possession thereof to said defendants, and to vacate the premises;

3) Condemning the plaintiffs, severally and solidarily, to pay to the defendants the sums of:

(a) – FIVE THOUSAND PESOS (P5,000.00) as actual damages;

(b) – ONE THOUSAND PESOS (P1,000.00) as attorney's fees; and

(c) – the costs of suit.

SO ORDERED.[10]

The plaintiffs appealed the decision to the then Intermediate Appellate Court (IAC).[11] The appeal was docketed as AC-G.R. CV No. 58863-R.

Meanwhile, the entire property, Lot No. 1496, was subdivided. One of the lots was Lot 1496-B with an area of 2,114 square meters. On October 5, 1976, TCT No. 2833 covering an area of 13,282 square meters[12] was cancelled by TCT No. 9383 covering Lot 1496-B, which was issued in the name of Catalina Macias.[13] Entry No. 8465 was carried over in the said title. On November 10, 1975, Catalina Macias filed an Urgent Supplemental Motion in Cad. Case No. 5 (LRC Cad. Rec. No. 144) with the then Court of First Instance (CFI), Branch III,[14] for the cancellation of Entry No. 8465 relating to the notice of lis pendens annotated at the dorsal portion of TCT No. 9383, in Civil Case No. 4823. The court granted her motion[15] on October 11, 1976, although the defendants therein had appealed the decision to the Intermediate Appellate Court. Thereafter, the Register of Deeds cancelled Entry No. 8465, in compliance with the order of the CFI.[16]

Catalina Macias executed a real estate mortgage over the property covered by TCT No. 9383 in favor of the Bank of the Philippine Islands (BPI) as security for a loan on December 15, 1976.[17] Upon failure to pay her loan, the bank foreclosed the mortgage and caused the sale of the property at public auction. The BPI was the highest bidder for P90,250.74. A sheriff's certificate of sale was executed on June 18, 1982, in favor of the BPI. The certificate of sale was annotated at the dorsal portion of TCT No. 9383.[18] As Catalina Macias failed to redeem the property within the redemption period, the bank consolidated its title over the property. Thus, on December 29, 1983, TCT No. 9383 was cancelled by TCT No. 14229 in the name of the Bank.[19]

On June 29, 1984, the Intermediate Appellate Court (IAC) rendered its Decision in AC-G.R. CV No. 58863-R, reversing the lower court's decision and entering another one in favor of the plaintiffs-appellants therein, declaring them and the defendant-appellee Catalina Macias as co-owners of the property. The decretal portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and another one entered.

1) Declaring plaintiff-appellant Joaquin Unto as the absolute owner of 1/2 of the 1/4 share pertaining to Eugenia Lumacad and Domingo Lumacad of Lot No. 1496;

2) Declaring Victoriana Unto as the absolute owner of the other 1/8 share of the Lumacad heirs of the same parcel of land;

3) Declaring plaintiffs-appellants Joaquin Unto and Victoriana Unto as the absolute owners pro indiviso of the 1/4 share pertaining to Julian Mendez;

4) Declaring plaintiff-appellant Victoriana Unto as the absolute owner of the 1/4 share of the late Alfonsa Mendez of the lot in question;

5) Declaring defendant-appellee Catalia (sic) Macias as the absolute owner of the 1/4 share of the Heirs of Pio Mendez of Lot No. 1496; and

6) Ordering the Register of Deeds of Dumaguete City to cancel Transfer Certificates of Title Nos. 2714 and 2833 covering Lot No. 1496 and to restore Original Certificate of Title No. 23, deleting all the inscriptions appearing on the back thereof, the same being declared herein as null and void.

Without any pronouncement as to attorney's fees and costs.

SO ORDERED.[20]

On August 19, 1984, the Decision of the IAC became final and executory in due course.[21]

Six years thereafter, or on September 25, 1990, David Unto, who claimed to be an heir of the plaintiffs, submitted the 1984 IAC Decision with the Office of the Register of Deeds-Dumaguete City for the enforcement of paragraph 6 of the decision which reads:

6) Ordering the Register of Deeds of Dumaguete City to cancel Transfer Certificates of Title Nos. 2714 and 2833 covering Lot No. 1496 and to restore Original Certificate of Title No. 23, deleting all the inscriptions appearing on the back thereof, the same being declared herein as null and void.

However, David Unto failed to surrender to the Register of Deeds the owner's duplicate of TCT No. 2833 because the same had already been cancelled. The Register of Deeds told him that the decision could not be implemented on the following grounds:

a) Non-surrender of the owner's duplicate of Transfer Certificate of Title No. 2833,

b) The Court Decision promulgated on June 29, 1984 does not order the Register of Deeds of Dumaguete City to cancel the mortgage under Entry No. 8074 executed in favor of the Central Savings and Loan Association and the corresponding Sheriff's Certificate of Sale under Entry No. 12801, and Transfer Certificate of Title No. 14229 registered in the name of the Bank of the Philippine Islands covering Lot No. 1496-B under subdivision plan No. Psd-248462. Transfer Certificate of Title No. 14229 is a transfer from TCT No. 9383 issued in favor of Catalina Macias with an area of about 7,114 square meters.[22]

The matter was elevated by the Register of Deeds to the Land Registration Authority (LRA) through a consulta. On September 22, 1992, the LRA, through Consulta No. 1974, directed the Register of Deeds-Dumaguete City to refer the matter to the Court of Appeals for its resolution. The Register of Deeds complied by means of a "Manifestation" in the Court of Appeals.

The Court of Appeals required the parties to file their comment on the matter but they failed to do so. In a Resolution dated June 8, 1993, the Court of Appeals simply noted the Manifestation filed by the Register of Deeds of Dumaguete City and the Resolution of the Land Registration Authority, without prejudice to any further action that the parties-in-interest in the case before it may take on the matter.[23]

On November 28, 1997, thirteen (13) years after the IAC decision had become final and executory, Asuncion Macias-Corsame, Rufina Macias-Ramirez, Ma. Lourdes Partosa-Macias, Alexander Unto and David Unto, who alleged to be the co-heirs of the plaintiffs, filed an Urgent Omnibus Petition[24] in Civil Case No. 4823, with the Regional Trial Court of Negros Oriental, Branch 31,[25] praying that the Register of Deeds be ordered to implement the Decision of the IAC:

WHEREFORE, this Honorable Court of origin, is respectfully prayed:

- To order the Register of Deeds for Dumaguete City to fully implement and/or execute the “Decision” of the Intermediate Appellate Court, Manila, dated June 29, 1984 and made final and executory on August 29, 1984 in this case, especially concerning the dispositive portions of paragraphs 1-5, inclusive as to the absolute ownership of the property and paragraph 6 of the same ordering the Register of Deeds of Dumaguete City to cancel TCT Nos. 2714 and 2833 covering Lot No. 1496 and restore the OCT No. 23 deleting all the inscriptions appearing on the back thereof, the same being declared null and void” (underlining ours), and further ordering the same Register of Deeds to register and annotate in OCT No. 23 after its restoration and the sharing of the absolute ownerships of the parties-in-interest concerned which are the portions of the said decision (sic) that have not been implemented in so far as registration of the same decision is concerned up to this late date;
- That, if and when the Register of Deeds for Dumaguete still refuses to implement and/or execute the said portions of the decision, he be declared in Indirect Contempt of Court under Sec. 3 (b) of Rule 71 of the Revised Rules of Court for disobeying and/or refusing to implement and/or execute a legitimate and lawful judicial order or decision of the Honorable Intermediate Appellate Court, Manila; and order the proper sanctions to the officer or officers concerned who may have made such apparent violation or violations; and if possible furnish a copy of the Order to the Office of the Ombudsman, Visayas Area, Cebu City, Philippines; and
- That the herein petitioners as Co-Heirs of the late JOAQUIN UNTO and VICTORIANA UNTO-MACIAS be granted any other relief or remedy under the given premises.[26]

The five movants alleged, inter alia, that the Consulta of the Register of Deeds cannot prevail over the decision of the IAC and that the parties in Civil Case No. 4823 and the movants themselves, after the death of the original parties in the said cases, had agreed to implement the decision of the IAC. However, the agreement was not filed and registered in the Office of the Register of Deeds. Acting on the motion, the court granted the petition and ordered the issuance of the corresponding writ of execution on December 11, 1997.[27]

Mariano Lim (herein respondent) filed a Manifestation[28] on December 23, 1997 informing the court that he had purchased Lot No. 1496-B covered by TCT No. 4229 from the BPI in good faith and for value; Branch 41 of the Regional Trial Court had issued a Writ of Possession in his favor on October 6, 1997; and, the Urgent Omnibus Petition filed by the co-heirs of Joaquin Unto and Victoriana Unto-Macias partook of a motion for the issuance of a writ of execution for an already stale IAC decision. He also alleged that the movants were guilty of forum shopping.

On December 24, 1997, Lim filed a Motion to Stay Execution[29] in Civil Case No. 4823 on the ground that the decision of the IAC sought to be implemented had become final and executory on October 5, 1984; hence, the said decision could no longer be enforced by motion considering that the prescriptive period therefor had long lapsed. On January 8, 1998, the court issued an Order[30] declaring that Lim had no personality to intervene in the case as he was not one of the litigants in the IAC case. However, the court reconsidered its December 11, 1997 Order and denied the motion of the movants, on the ground that the said motion was filed beyond the five-year period from the date of finality of the IAC decision.

The movants filed on April 7, 1998 their Motion for Reconsideration of the January 8, 1998 Order alleging that the original parties in Civil Case No. 4823 had implemented the IAC decision by causing the subdivision of Lot No. 1496 into four (4) lots, Lot 1496-A, 1496-B, 1496-C and 1496-D,[31] and that Lot 1496-A was occupied by the heirs of Joaquin Unto, Lot No. 1496-B and Lot No. 1496-D were occupied by the heirs of Victoriana Macias, and Lot 1496-C was occupied by the heirs of Catalina Macias. They also filed a Supplemental Motion[32] on April 13, 1998 praying, inter alia, that they be substituted as parties-plaintiffs in lieu of the original plaintiffs, who had already died pendente lite. They also alleged that the heirs of Catalina Macias had executed a deed waiving

their rights over the property in their favor, which waiver was filed in Civil Case No. 7999 pending at the RTC of Negros Oriental, Branch V.

On April 27, 1998, the trial court issued an Order denying the motion for reconsideration and the supplemental motion of the movants, reiterating that their omnibus motion was filed beyond the five-year period provided for in Section 6, Rule 39 of the Rules of Court, as amended:

Considering the allegations and the arguments in the plaintiffs' motion for reconsideration as well as the supplemental motion, and considering that the decision of the Court of Appeals which has been final for 13 years and it was only after the 13th year of its finality that plaintiffs appeared and moved for the execution of said judgment, notwithstanding the decision of the Supreme Court allowing in certain cases late execution of final judgment even beyond the period of five (5) years not however, exceeding ten (10) years, the said motion for reconsideration is hereby denied for lack of merit.

SO ORDERED.[33]

The movants and twenty-five others, who alleged to be the co-heirs of the original plaintiffs, filed a complaint, on April 27, 1998 against CSLA, BPI, Leonora Macias and the Sheriff, docketed as Civil Case No. 12212 for quieting of title, reconveyance and damages. In addition, they filed, on July 22, 1998, a petition for certiorari and mandamus under Rule 65 with the Court of Appeals[34] assailing the lower court's Orders dated January 8, 1998, and April 27, 1998, alleging that the trial court issued the same with grave abuse of discretion amounting to excess or lack of jurisdiction. The petitioners alleged, inter alia, in their petition that:

(A) IN REVERSING ITS OWN ORDER DATED DECEMBER 11, 1997, WITHOUT THE PROPER MOTION TO THAT EFFECT, IN EXCESS OF JURISDICTION, TANTAMOUNT TO A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION;

(B) IN NOT CONSIDERING THE FACT THAT THE PREVAILING PARTY CONTINUED OCCUPATION, POSSESSION AND ENJOYMENT OF THE PROPERTY IN QUESTION FROM 1984 UP TO THE PRESENT TIME, WITHOUT THE OBJECTION OF THE DEFENDANTS, EXCEPT IN NOVEMBER 1997 WHEN LIM, WHO IS NOT A PARTY IN THE CASE, CLAIMED TO HAVE BOUGHT THE LAND FROM BPI; THUS, THE CA DECISION WAS ALREADY SUBSTANTIALLY SATISFIED; AND IT IS NOT ANYMORE COVERED BY THE PRESCRIPTIVE 5-YEAR PERIOD;

(C) IN NOT CONSIDERING THAT THE TORRENS SYSTEM DOES NOT SHIELD ANY TITLE FRAUDULENTLY PROCURED.[35]

The petitioners asserted that: (a) before their deaths, the original parties in Civil Case No. 4823 had implemented the decision of the IAC and had taken possession of the portions of the property allotted to them under the said decisions; (b) the delay of the implementation of the decision of the IAC was caused by the financial difficulties of the original defendants in Civil Case No. 4823 and not the fault of the petitioners; (c) TCT No. 14229 in the name of respondent BPI is void because the bank acquired the property in bad faith; (d) the cancellation of the notice of lis pendens by the CFI acting as a cadastral court in LRC Case No. 5, despite the pendency of the appeal of the petitioners from the decision of the RTC is illegal because the cadastral court had no jurisdiction to resolve the said motion of Catalina Macias relating to Civil Case No. 4823; (d) Lim had no personality to intervene in Civil Case No. 4823; and, (e) the trial court had no authority to set aside, ex parte, its December 11, 1997 Order.

In his comment on the petition, the respondent Lim averred that the petitioners were guilty of forum shopping because the issues raised by the petitioners in their petition were, likewise, the subject of their appeal to the Court of Appeals from the Order[36] of the RTC of Negros Oriental, Branch 41, in LRC Case No. 2000, and of the complaint of the petitioners against the respondents filed in the RTC of Negros Oriental with a prayer for a writ of

preliminary injunction, docketed as Civil Case No. 12212 where in they prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, it is most respectfully prayed of this Honorable Court that (a) after due hearing, a writ of preliminary mandatory injunction be immediately issued in accordance with Rule 58 of the new Civil Procedure, enjoining the defendants Lims to take off the guardhouse, the guards, and enclosing fence they put up in Lot 1496 of Lot 1496-B;

(b) After trial, the inexistence of instruments—(1) the Order of October 11, 1976 in a cadastral motion, Cad. Case No. 5, cancelling the annotation of lis pendens in Entry No. 25538 of TCT 9383, (2) the Real Estate Mortgage by a non-owner, with the BPI, the Sheriff's Sale dated June 18, 1971, (3) the annotation of Entry No. 12801 of TCT No. 14229 in the name of the Bank of the Philippine Islands, Dumaguete; (4) the Real Estate Mortgage by a non-owner with the CESLA; (5) the Sheriff's Certificate of Sale dated May 20, 1971, in Entry No. 12801 of TCT No. 2833, -- be all declared null and void insofar as the plaintiffs are concerned;

(c) The defendants being in bad faith, be ordered to pay plaintiffs the amount of P200,000.00, as moral damages;

(d) The adjudication in the dispositive portion of the CA Decision, as stated on page 3 hereof (sic) be followed;

(e) And the defendants be ordered to reimburse plaintiffs P50,000.00 incurred for attorney's fees, docketing fees, and other incidental expenses.[37]

In its comment on the petition, the respondent BPI alleged that whether or not it acted in bad faith when it purchased the property at public auction covered by TCT No. 14229 is a factual issue, and, under Rule 65 of the Rules of Court, not the proper subject of a petition for certiorari and prohibition. Hence, the Court of Appeals should dismiss the petition.

On March 31, 1999, the Court of Appeals rendered judgment dismissing the petition. The appellate court held that the petitioners' Omnibus Motion was barred, citing Section 6, Rule 39 of the Revised Rules of Civil Procedure. The CA did not rule on the validity of the sale of the subject property by respondent bank to respondent Lim and its other related issues since these are now the subject of the complaint filed by the petitioners against the respondents in the RTC of Negros Oriental docketed as Civil Case No. 12212, an action for quieting of title, declaration of inexistence of instrument and damages filed by the petitioners against the respondents.

The Issues

In the present recourse, the petitioners assigned the same errors assigned by them in their petition for certiorari in the Court of Appeals, thus:

(A) IN VIOLATING THE DEEPLY EMBEDDED SUPREME COURT DOCTRINE IN COMPUTING THE TIME LIMIT FOR SUING OUT AN EXECUTION;

(B) IN DECIDING WITHOUT DUE PROCESS, AS THE PETITIONERS WOULD HAVE PRESENTED EVIDENCE THAT THE PREVAILING PARTY CONTINUED OCCUPATION, POSSESSION AND ENJOYMENT OF THE PROPERTY IN QUESTION FROM 1984 UP TO THE PRESENT TIME, WITHOUT THE OBJECTION OF THE DEFENDANTS, EXCEPT IN NOVEMBER 1997 WHEN LIM, WHO IS NOT A PARTY IN THE CASE, CLAIMED TO HAVE BOUGHT THE LAND FROM BPI; THUS, THE CA DECISION WAS ALREADY SUBSTANTIALLY SATISFIED; AND IT IS NOT ANYMORE COVERED BY THE PRESCRIPTIVE 5-YEAR PERIOD;

(C) IN DECIDING AGAINST THE TORRENS SYSTEM LAW THAT IT DOES NOT SHIELD ANY TITLE FRAUDULENTLY PROCURED.[38]

The petitioners contend that the five-year period under Section 6, Rule 39 of the Rules of Court was superseded by the implementation of the IAC decision by the original parties in Civil Case No. 4823, causing the subdivision of the property into Lots 1496-A, 1496-B, 1496-C and 1496-D, corresponding to the shares of the parties. Thus, the parties took possession of their respective shares. The petitioners posit that they had not been disturbed in their possession of the property until Mariano Lim filed his Manifestation and Motion to Stay Execution in Civil Case No. 4823. They also allege that the delay in the enforcement of the IAC decision was caused by the financial difficulties of the defendants in Civil Case No. 4823.

The petitioners submit that the cancellation by the CFI , Branch III, in LRC Case No. 5 of Entry No. 8465 annotated at the dorsal portion of TCT No. 9383 despite the appeal of the decision of the trial court in Civil Case No. 4823, the execution by the Sheriff of the Certificate of Sale over a portion of the property in favor of respondent BPI, the cancellation of TCT No. 9383 and the issuance of TCT No. 14229 in the name of respondent BPI and the sale by the latter of the said property to respondent Mariano Lim would not preclude the enforcement of the IAC decision for the cancellation of TCT No. 2833 and the restoration of OCT No. 23. They argue that the Sheriff, respondents BPI/CSLA and Lim had knowledge of the pendency of the appeal from the decision of the RTC in Civil Case No. 4823. They assert that the cancellation by the cadastral court of Entry No. 8465 annotated at the dorsal portion of TCT No. 9383 is null and void for the added reason that the then Court of First Instance, Branch III, as a cadastral court, had limited jurisdiction and have had no authority to cancel the said entry relating to the pendency of Civil Case No. 4823.

In his comment on the petition, respondent Mariano Lim asserts that the Court of Appeals did not commit any abuse of its discretion, as it only applied the correct law and jurisprudence on the matter.[39] He claims that the petitioners are guilty of forum shopping since an identical case had been filed by them in the RTC of Negros Oriental, docketed as Civil Case No. 12212.

Respondent CSLA, for its part, maintains that no mutual or oral agreement was entered into by the original parties of the case to satisfy the 1984 IAC Decision; otherwise, the petitioners would not have filed the present petition. It asserts that Lot 1496-A which it purchased from the Sheriff, only a small portion thereof is being occupied by one of the petitioners;[40] and that it is not incumbent upon the respondent to enforce the 1984 IAC Decision.[41] It maintains that the respondent court did not commit any error in its assailed decision; and that a motion to execute the judgment, which had become final and executory thirteen (13) years earlier, is already barred by laches and prescription.[42]

On the other hand, respondent BPI asserts that it is a mortgagee in good faith and did not, in any manner, act in collusion with co-respondents. As such, it contends, the petitioners had no cause of action for damages against it. It points out that the petition is not verified by all the petitioners and that the certification of non-forum shopping is, likewise, not signed by all of them. It also claims that the petition was filed out of time.[43]

The issues for resolution in the petition at bar are (a) whether the petitioners have a cause of action against the respondents for the nullification of the January 8, 1998 and April 7, 1998 Orders of the RTC in Civil Case No. 4823; and, (b) if, in the affirmative, whether the court a quo committed grave abuse of discretion amounting to excess or lack of jurisdiction in denying the Omnibus Petition of petitioners Asuncion Macias-Corsame, Rufina Macias Ramirez, Maria Lourdes Parton-Macias, David Unto and Alexander Unto.

The Court's Ruling

The petition is bereft of merit.

Although the first issue was not raised by the parties in the Court of Appeals and in this Court, we may still take cognizance of the said issue and resolve the same, such issue being intertwined with the issues raised by the

parties and necessary in arriving at a just decision of the case.[44]

Rule 65, Sections 1 and 2, of the Rules of Court, as amended, provides that a petition for prohibition and certiorari may be filed only by the aggrieved party/parties. The person aggrieved referred to in the said sections pertains to one who was a party in the proceedings before the lower court. If a petition for certiorari or prohibition is filed by one who was not a party in the lower court, he has no standing to question the assailed order.[45] The Court notes that the only movants in the Urgent Omnibus Petition filed in Civil Case No. 4823 were the petitioners Asuncion Corsame, Rufina Ramirez, Ma. Lourdes Macias, Alexander Unto and David Unto, who alleged that they were the co-heirs of the plaintiffs in the said civil case. In their supplemental motion, they prayed that they be substituted as parties-plaintiffs in lieu of the original plaintiffs. However, the trial court failed to resolve the said motion. Neither did the movants (petitioners) reiterate their plea for substitution in their motion for reconsideration of the court's January 8, 1998 Order. Neither did they file a petition for mandamus in the Court of Appeals to compel the RTC to resolve their supplemental motion for their substitution as parties-plaintiffs, in lieu of the original plaintiffs. The twenty-five other petitioners in the Court of Appeals and in this Court never filed any motion for their substitution as parties-plaintiffs before the lower court. It was only in the Court of Appeals that they alleged, for the first time, that they were heirs of the original plaintiffs in Civil Case No. 4823. They were, likewise, unable to show, at least prima facie, that they are the only heirs of the original plaintiffs in the said civil case, both in the appellate court and in this Court. We also note that, although the petitioners alleged in their supplemental motion that Victoriana Unto died on November 8, 1989, and that Joaquin Unto died on March 8, 1978, the movants failed to append certified copies of the Certificates of Death of the said plaintiffs, or to adduce proof that the said plaintiffs were already dead, and that they were survived by their heirs, the movants therein, and by the other fourteen (14) petitioners in the Court of Appeals for that matter. This would have enabled either the appellate or trial court to order the proper substitution, conformably to Rule 3, Section 16 of the Rules of Court.

SEC. 16. Death of a party; duty of counsel.— Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.[46]

The bare allegation of the petitioners that they are the heirs and are co-owners of the property subject of the IAC decision will not suffice. There must be competent preponderant proof that they are, indeed, heirs of the original plaintiffs and co-owners of the property subject of the IAC decision. Absent such evidence, it cannot be argued that the petitioners are the real parties-in-interest, as parties-plaintiffs in Civil Case No. 4823, as the petitioners in the Court of Appeals and in this Court.

It bears stressing that a review by certiorari under Rule 45 of the Rules of Court is a matter of discretion. Where, as in this case, there is no sufficient showing that the petitioners are the real parties-in-interest as petitioners in the Court of Appeals and in this Court, their petition may be dismissed.[47]

The trial court cannot be faulted for issuing the January 8, 1998 Order which set aside its December 11, 1997 Order, and, in effect, denied the Urgent Omnibus Petition of the five (5) petitioners; and its Order dated April 27, 1998, denying the movants' (petitioners') motion for reconsideration of the same.

Section 6, Rule 39 of the Revised Rules of Court provides:

SEC. 6. Execution by motion or by independent action. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.[48]

Generally, once a judgment becomes final and executory, the execution thereof becomes a ministerial duty of the court.[49] The prevailing party can have it executed as a matter of right by mere motion within five years from date of entry of the judgment. If the prevailing party fails to have the decision enforced by a mere motion after the lapse of five (5) years from the date of its entry, the said judgment is reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all ordinary actions, by the institution of a complaint in a regular form.[50] Thus, the recourse left for the petitioners is to revive the judgment through an independent action which must be filed within ten (10) years from the time the judgment became final.[51] The ten-year period within which an action for revival of a judgment should be brought, commences to run from the date of finality of the judgment, and not from the expiration of the five-year period within which the judgment may be enforced by mere motion.[52]

In the case at bar, the entry of judgment of the IAC decision sought to be enforced was made on August 19, 1984.[53] Plaintiffs Joaquin Unto and Victoriana Unto Vda. de Macias, or their respective heirs or their successors-in-interest, had until August 19, 1989 within which to enforce the IAC Decision by mere motion. They failed to file such motion. They also failed to revive the judgment by an ordinary action within the ten-year period. They waited for thirteen long years before they sought to have the 1984 IAC Decision enforced. Worse, they did so only on November 28, 1997, by a mere motion for the issuance of a special order for the enforcement of paragraph 6 of the IAC decision. Such a motion is not an action to revive the judgment of the IAC within the contemplation of Section 6, Rule 39 of the Rules of Court, as amended.

That the delay in the execution of the judgment was due to the financial difficulties of the defendants in Civil Case No. 4823 is irrelevant. It is the prevailing party who is entitled, as a matter of right, to a writ of execution in its favor. It is not an option of the losing party to file a motion for the execution of the judgment to compel the winning party to take the judgment.[54] The petitioners, as the prevailing parties in the judgment sought to be enforced, can file their motion or independent action within the periods therefor notwithstanding any financial difficulties of the losing party. They should only concern themselves with the execution of the judgment. Otherwise, their inaction may be construed as a waiver. The petitioners slept on their rights for thirteen years; perforce, they must suffer the consequences of their gross inaction.

We have ruled that the running of the five-year period may be interrupted should there be an agreement of the parties to defer or suspend the enforcement of the judgment.[55] However, the petitioners failed to prove in the court a quo that the original parties in Civil Case No. 4823 had any agreement to enforce the IAC decision and that they had already implemented the same. They failed to adduce in evidence any written agreement executed by the parties in the court a quo. Bare allegations, without more, do not meet the quantum of evidence needed to

establish the same as a fact. We agree with the following disquisitions of the Court of Appeals:

The Untos' argument that this case is an exception to the said five year period limitation is untenable. In the first place it is based on bare allegations unsupported by hard evidence. In the absence of sufficient proof, We cannot just accept as is their claims that the interruption or delay in the execution was due to arrangements they have entered into and also that the financial difficulties of the Macias was a cause for the delay. Assuming hypothetically that the litigants had made arrangements among themselves, this could not have included Paragraph 6 of the dispositive portion which is directed on the Register of Deeds and who is the petitioners' target for their prayer for compliance and execution.[56]

While it is true that Lot No. 1496 was subdivided and that one of the subdivision lots is Lot No. 1496-B covered by TCT No. 9383 under the name of Catalina Macias, the petitioners failed to prove that the subdivision of the property was based on the agreement of the parties in Civil Case No. 4823 to implement the IAC decision.

It is incredible that the original parties implemented the IAC decision by causing the subdivision of the property and by taking possession of their respective shares therein, and yet failed to file any motion in the trial court to enforce paragraph 6 of the IAC decision. Even the request of David Unto for the Register of Deeds to implement paragraph 6 of the IAC decision was made only on September 25, 1990, more than six years after the entry of judgment of the IAC decision was made. The plaintiffs in Civil Case No. 4823 (the petitioners herein) even failed to file in the Court of Appeals their Comment on the matter despite the order of the appellate court.

IN THE LIGHT OF ALL THE FOREGOING DISQUISITIONS, the petition is hereby DENIED due course. The Decision dated March 31, 1999 and the resolution dated June 23, 1999 of the Court of Appeals in CA-G.R. SP No. 48188 are AFFIRMED. Costs against the petitioners.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Godardo A. Jacinto and Renato . Dacudao, concurring.

[2] CA Rollo, p. 129.

[3] Rollo, p. 71.

[4] Ibid.

[5] Id. at 50.

[6] Records, pp. 7-8.

[7] Rollo, p. 71.

[8] Id. at 72.

[9] Id. at 79-89.

[10] Id. at 88-89.

[11] First Civil Cases Division, Penned by Associate Justice Ma. Rosario Quetulio-Losa, with Associate Justices Ramon G. Gaviola, Jr. (Acting Presiding Justice) and Eduardo Caguioa, concurring.

[12] Rollo, p. 71.

[13] Id. at 91.

[14] Presided by Judge Cipriano Vamenta, Jr.

[15] Rollo, p. 90.

[16] Id. at 91.

[17] Entry No. 25983, at the back of TCT No. 9383, Rollo, p. 91.

[18] Entry No. 36179, Rollo, p. 92.

[19] Rollo, p. 92.

[20] Id. at 107-108.

[21] Id. at 109.

[22] Records, p. 293.

[23] Id. at 295-301.

[24] Id. at 287.

[25] Presided by Judge Rogelio L. Carampatan.

[26] Records, pp. 290-291.

[27] Rollo, p. 112.

[28] Records, p. 325.

[29] Id. at 342.

[30] Rollo, p. 113.

[31] Records, p. 363.

[32] Id. at 352.

[33] Rollo, p. 114.

[34] Penned by Associate Justice Godardo A. Jacinto (Chairman) with Associate Justices Roberto A. Barrios and Renato C. Dacudao, concurring.

[35] CA Rollo, p. 017.

[36] In the said Order, the court granted Lim's motion for a writ of possession over the property covered by TCT No. 14229 under the name of respondent BPI.

[37] CA Rollo, pp. 112-113.

[38] Rollo, p. 19.

[39] Rollo, p. 129.

[40] Id. at 160.

[41] Id. at 161.

[42] Id. at 163.

[43] Id. at 180-181.

[44] Servicewide Specialists, Inc. vs. Court of Appeals, 257 SCRA 643 (1996).

[45] Tang vs. Court of Appeals, 325 SCRA 394 (2000).

[46] Supra.

[47] Tang vs. Court of Appeals, supra.

[48] Camacho vs. Court of Appeals, 287 SCRA 611 (1998).

[49] Buaya vs. Stronghold Insurance Co., Inc., 342 SCRA 576 (2000).

[50] See Caiña vs. Court of Appeals, 239 SCRA 252, 261-262 (1994) citing Compania General de Tabacos vs. Martinez, 24 Phil. 515, 520-21 (1915). See also Estonina vs. Southern Marketing Corp., 167 SCRA 605 (1988).

[51] New Civil Code provides:

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

...

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

[52] Philippine National Bank vs. Dells, 32 SCRA 266, 272 (1970).

[53] Rollo, p. 109.

[54] AFP Mutual Benefit Association, Inc. vs. Court of Appeals, 364 SCRA 768 (2001).

[55] See Trouble vs. de Los Angeles, 96 SCRA 69 (1980) citing Lancet vs. Magbanua, 117 Phil. 39 and MRR vs. CIR, 117 Phil. 192 (1961).

[56] Rollo, p. 119.

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