

**ANTONIO DOCENA AND ALFREDA DOCENA, PETITIONERS, VS. HON. RICARDO P. LAPESURA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, BRANCH III, GUIAN, EASTERN SAMAR; RUFINO M. GARADO, ...**

*G.R. No. 140153. March 28, 2001*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the nullification of the Court of Appeals[1] Resolutions dated June 18, 1999 and September 9, 1999 which dismissed the Petition for Certiorari and Prohibition[2] under Rule 65 and denied the corresponding motion for reconsideration, respectively.

The antecedent facts are as follows:

On June 1, 1977, private respondent Casiano Hombria filed a Complaint for the recovery of a parcel of land against his lessees, petitioner-spouses Antonio and Alfreda Docena.[3] The petitioners claimed ownership of the land based on occupation since time immemorial.[4] A certain Guillermo Abuda intervened in the case. In a Decision dated November 24, 1989, the trial court ruled in favor of the petitioners and the intervenor Abuda.[5] On appeal, the Court of Appeals reversed the judgment of the trial court and ordered the petitioners "to vacate the land they have leased from the plaintiff-appellant [private respondent Casiano Hombria], excluding the portion which the petitioners reclaimed from the sea and forms part of the shore, as shown in the Commissioner's Report, and to pay the plaintiff-appellant the agreed rental of P1.00 per year from the date of the filing of the Complaint until they shall have actually vacated the premises." [6] The Complaint in Intervention of Abuda was dismissed.[7]

On May 22, 1995, private respondent Hombria filed a Motion for Execution of the above decision which has already become final and executory.[8] The motion was granted by the public respondent judge, and a Writ of Execution was issued therefor. However, the public respondent sheriff subsequently filed a Manifestation requesting that he "be clarified in the determination of that particular portion which is sought to be excluded prior to the delivery of the land adjudged in favor of plaintiff Casiano Hombria" in view of the defects in the Commissioner's Report and the Sketches attached thereto.[9] After requiring the parties to file their Comment on the sheriff's Manifestation, the public respondent judge, in a Resolution dated August 30, 1996, held that "xxx no attempt should be made to alter or modify the decision of the Court of Appeals. What should be delivered therefore to the plaintiff xxx is that portion leased by the defendant-appellees from the plaintiff-appellant excluding the portion that the defendant-appellee have reclaimed from the sea and forms part of the shore as shown in the commissioner's report xxx." [10] Pursuant to the Resolution, the public respondent sheriff issued an alias Writ of Demolition. The petitioners filed a Motion to Set Aside or Defer the Implementation of Writ of Demolition. This motion was denied by the public respondent judge in an Order dated November 18, 1998, a copy

of which was received by the petitioners on December 29, 1998.[11] Also on December 29, 1998, the public respondent judge, in open court, granted the petitioners until January 13, 1999 to file a Motion for Reconsideration.[12] On January 13, 1999, petitioners moved for an extension of the period to file a motion for reconsideration until January 28, 1999.[13] The motion was finally filed by the petitioners on January 27, 1999, but was denied by the trial court in an Order dated March 17, 1999.[14] A copy of the Order was received by the petitioners on May 4, 1999.[15]

A Petition for Certiorari and Prohibition was filed by the petitioners with the Court of Appeals, alleging grave abuse of discretion on the part of the trial court judge in issuing the Orders dated November 18, 1998 and March 17, 1999, and of the sheriff in issuing the alias Writ of Demolition. In a Resolution dated June 18, 1999, the Court of Appeals dismissed the petition on the grounds that the petition was filed beyond the 60-day period provided under Section 4 of Rule 65 of the 1997 Revised Rules of Civil Procedure as amended by Bar Matter No. 803 effective September 1, 1998, and that the certification of non-forum shopping attached thereto was signed by only one of the petitioners.[16] The Motion for Reconsideration filed by the petitioners was denied by the Court of Appeals in a Resolution dated September 9, 1999.[17]

Hence this petition.

The sole issue in this case is whether or not the Court of Appeals erred in dismissing the Petition for Certiorari and Prohibition.

The petition is meritorious.

The Court of Appeals dismissed the Petition for Certiorari upon the following grounds, viz: (1) the petition was filed beyond the 60-day period provided under Sec. 4, Rule 65 of the 1997 Revised Rules of Civil Procedure as amended by Bar Matter No. 803 effective September 1, 1998; and (2) the certification of non-forum shopping was signed by only one of the petitioners.

Upon the first ground, the Court of Appeals stated in its Resolution dated June 18, 1999 that:

xxx the 60-day period is counted not from the receipt of the Order denying their Motion for Reconsideration but from the date of receipt of the Order of November 18, 1998 which was on December 29, 1998, interrupted by the filing of the Motion for Reconsideration on January 27, 1999. The Motion for Reconsideration was denied in an Order dated March 17, 1999 received by the petitioners on May 4, 1999. Counting the remaining period, this petition should have been filed on June 4, 1999 but it was filed only on June 14, 1999 or ten (10) days beyond the 60-day period computed in accordance with Bar Matter No. 803.

xxx xxx xxx[18]

The petitioners agree that the counting of the 60-day period should commence on December 29, 1998, the date of the receipt by the petitioners of the assailed trial court order, interrupted by the filing of a motion for reconsideration on January 27, 1999, and resume upon receipt by the petitioners of the denial of the motion by the trial court on May 4, 1999; however, the petitioners contend that from December 29, 1998 up to January 27, 1999, only the 15-day period allowed for the filing of a motion for reconsideration[19] should be deemed to have elapsed considering the grant by the trial court of an extension of the period to file the motion until January 13, 1999. Hence, on May 4, 1999, the petitioners still had 45 days to file a petition for certiorari and/or prohibition, and the filing made on June 14, 1999 was timely.

We hold that the Petition for Certiorari and Prohibition has been timely filed.

A.M. No. 00-2-03-SC, which took effect on September 1, 2000, amended Section 4 of Rule 65 of the 1997

Revised Rules of Civil Procedure[20] to provide thus:

SEC. 4. When and where petition filed.-- The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. [Emphasis ours]

In the case of *Systems Factors Corporation versus NLRC*,[21] we held that the abovequoted Resolution, being procedural in nature, is applicable to actions pending and undetermined at the time of their passage. The retroactive application of procedural laws such as this Resolution is not violative of any right of a person who may feel adversely affected thereby, as no vested right may attach to nor arise from procedural laws.[22] The ruling in the *Systems Factors* case was reiterated in the recent case of *Unity Fishing Development Corporation, et. al. vs. Court of Appeals, et. al.*[23] Applying the Resolution to the case at bar, the 60-day period for the filing of a petition for certiorari and prohibition should be reckoned from the date of receipt of the order denying the motion for reconsideration, i.e., May 4, 1999, and thus, the filing made on June 14, 1999 was well within the 60-day reglementary period.

Anent the ground that the certification of non-forum shopping was signed by only one of the petitioners, it is the contention of the petitioners that the same is sufficient compliance with the requirements of Sections 1 and 2 of Rule 65 (Petition for Certiorari and Prohibition) in relation to Section 3 of Rule 46 (Original Cases Filed in the Court of Appeals). The petitioners argue that since they are spouses with joint or indivisible interest over the alleged conjugal property subject of the original action which gave rise to the petition for certiorari and prohibition, the signing of the certificate of non-forum shopping by only one of them would suffice, especially considering the long distance they had to travel just to sign the said certificate.[24] Moreover, there is substantial compliance with the Rules of Court where the certification was signed by the husband who is the statutory administrator of the conjugal property.[25]

It has been our previous ruling that the certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, and that the signing by only one of them is insufficient. In the case of *Efren Loquias, et. al. vs. Office of the Ombudsman, et. al.*,[26] we held that the signing of the Verification and the Certification on Non-Forum Shopping by only one of the petitioners constitutes a defect in the petition.[27] The attestation contained in the certification on non-forum shopping requires personal knowledge by the party executing the same,[28] and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as or similar to the current petition. To merit the Court's consideration, petitioners must show reasonable cause for failure to personally sign the certification.

In the case at bar, however, we hold that the subject Certificate of Non-Forum Shopping signed by the petitioner Antonio Docena alone should be deemed to constitute substantial compliance with the rules.[29] There are only two petitioners in this case and they are husband and wife. Their residence is the subject property alleged to be conjugal in the instant verified petition. The Verification/Certification on Non-Forum Shopping[30] attached to

the Petition for Certiorari and Prohibition was signed only by the husband who certified, inter alia, that he and his wife have not commenced any other action or proceeding involving the same issues raised in the petition in any court, tribunal or quasi-judicial agency; that to the best of their knowledge no such action is pending therein; and that he and his wife undertake to inform the Court within five (5) days from notice of any similar action or proceeding which may have been filed.

The property subject of the original action for recovery is conjugal. Whether it is conjugal under the New Civil Code or the Family Code, a fact that cannot be determined from the records before us, it is believed that the certificate on non-forum shopping filed in the Court of Appeals constitutes sufficient compliance with the rules on forum-shopping.

Under the New Civil Code, the husband is the administrator of the conjugal partnership.[31] In fact, he is the sole administrator, and the wife is not entitled as a matter of right to join him in this endeavor.[32] The husband may defend the conjugal partnership in a suit or action without being joined by the wife.[33] Corollarily, the husband alone may execute the necessary certificate of non-forum shopping to accompany the pleading. The husband as the statutory administrator of the conjugal property could have filed the petition for certiorari and prohibition[34] alone, without the concurrence of the wife. If suits to defend an interest in the conjugal properties may be filed by the husband alone, with more reason, he may sign the certificate of non-forum shopping to be attached to the petition.

Under the Family Code, the administration of the conjugal property belongs to the husband and the wife jointly.[35] However, unlike an act of alienation or encumbrance where the consent of both spouses is required, joint management or administration does not require that the husband and wife always act together. Each spouse may validly exercise full power of management alone, subject to the intervention of the court in proper cases as provided under Article 124 of the Family Code.[36] It is believed that even under the provisions of the Family Code, the husband alone could have filed the petition for certiorari and prohibition to contest the writs of demolition issued against the conjugal property with the Court of Appeals without being joined by his wife. The signing of the attached certificate of non-forum shopping only by the husband is not a fatal defect.

More important, the signing petitioner here made the certification in his behalf and that of his wife. The husband may reasonably be presumed to have personal knowledge of the filing or non-filing by his wife of any action or claim similar to the petition for certiorari and prohibition given the notices and legal processes involved in a legal proceeding involving real property. We also see no justifiable reason why he may not lawfully undertake together with his wife to inform the court of any similar action or proceeding which may be filed. If anybody may repudiate the certification or undertaking for having been incorrectly made, it is the wife who may conceivably do so.

In view of the circumstances of this case, namely, the property involved is a conjugal property, the petition questioning the writ of demolition thereof originated from an action for recovery brought against the spouses, and is clearly intended for the benefit of the conjugal partnership, and the wife, as pointed out in the Motion for Reconsideration in respondent court, was in the province of Guian, Samar, whereas the petition was prepared in Metro Manila, a rigid application of the rules on forum shopping that would disauthorize a husband's signing the certification in his behalf and that of his wife is too harsh and is clearly uncalled for.

It bears stressing that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.[37]

The petitioner's motion for the issuance of a temporary restraining order to put on hold the demolition of the

subject property is principally anchored on their alleged right to the nullification of the assailed orders and writs issued by the public respondents.[38] As the existence of the right being asserted by the petitioners is a factual issue proper for determination by the Court of Appeals, the motion based thereon should likewise be addressed to the latter court.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Court of Appeals Resolutions dated June 18, 1999 and September 9, 1999 are hereby SET ASIDE and the case is REMANDED to the Court of Appeals for further proceedings.

**SO ORDERED.**

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Fourth Division composed of J. Salome A. Montoya, ponente; and JJ. Conrado M. Vasquez and Teodoro P. Regino, members.

[2] Docketed as CA-G.R. SP No. 53211.

[3] Petition, p. 4; Rollo, p. 11. The case was docketed as RTC (of Guian, Eastern Samar, Branch 3) Civil Case No. 446.

[4] Ibid.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id., p. 6; Rollo, p. 13.

[10] Id., p. 7; Rollo, p. 14.

[11] Id.

[12] Id., p. 8; Rollo, pp. 15 and 88.

[13] Id.

[14] Id.

[15] Id.

[16] Court of Appeals Resolution dated June 18, 1999, p. 1; Rollo, p. 32.

[17] Court of Appeals Resolution dated September 9, 1999, pp. 1 to 2; Rollo, pp. 35 to 36.

[18] Supra., p. 1.

[19] Under Section 1 of Rule 52 of the 1997 Revised Rules of Civil Procedure.

[20] As amended by the Resolution of July 21, 1998.

[21] G.R. No. 143789, November 27, 2000.

[22] Ibid., p. 5, citing Gregorio vs. Court of Appeals, 26 SCRA 229; Tinio vs. Mina, 26 SCRA 512; and Billiones vs. CIR, 14 SCRA 674.

[23] G.R. No. 145415, February 2, 2001.

[24] The spouses reside in Guian, Eastern Samar, and had to go to their counsel in Manila just to sign the Verification / Certification of the petition. [Reply, p. 4; Rollo, p. 125.]

[25] Reply, p. 5.; Rollo, p. 126.

[26] G.R. No. 139396, August 15, 2000.

[27] Ibid., p. 6. The petitioners in this case are local government officials of San Miguel, Zamboanga del Sur, specifically, Mayor Efren Loquias, Vice Mayor Antonio Din, Jr., and Sangguniang Bayan members Angelito Martinez II, Lovelyn Biador and Gregorio Faciol.

[28] Ibid., see also Sps. Valentin Ortiz, et. al. vs. Court of Appeals, G.R. No. 127393, December 4, 1998, p. 712.

[29] Sections 1 and 2 of Rule 65; Section 3 of Rule 46; and Section 5 of Rule 7 of the 1997 Revised Rules of Civil Procedure.

[30] The Verification / Certification provides, thus:

#### **VERIFICATION/CERTIFICATION**

I, Antonio Docena, of legal age, Filipino, after being duly sworn, hereby depose and state that:

- I am one of the petitioners in the above entitled case;

- I and my co-petitioner wife caused the preparation of the above petition and have read the same;

- All the material allegations contained are true and correct based on our knowledge and based on official records. The annexes attached to the petition are duplicate original copies or true copies of the pleadings filed with Regional Trial Court or orders issued by the said court in Civil Case No. 446.

- I further certify that I and my co-petitioner wife have not commenced any other action or proceeding involving the same issues raised in this petition in the Supreme Court, Court of Appeals, or any division thereof, or in any other tribunal or quasi-judicial agency and to the best of our knowledge, no such other action is pending therein.

- I and my co-petitioner wife undertake to inform this Honorable Court within five (5) days from notice of any similar action or proceeding which may have been filed.

IN WITNESS WHEREOF, I hereunto set my hand this 14th day of June 1999 at Metro Manila.

(Sgd.) ANTONIO DOCENA  
Petitioner

[31] Article 165 of the New Civil Code.

[32] Ysasi vs. Fernandez, 23 SCRA 1079 (1968), at p. 1083; Tinitigan vs. Tinitigan, 100 SCRA 619 (1980), at p. 631. It should be noted, however that under the New Civil Code, although the husband is the administrator of the conjugal partnership, he cannot alienate or encumber any real property of the conjugal partnership without the wife's consent, subject only to certain exceptions specified in the law. [Heirs of Christina Ayuste vs. Court of Appeals, 313 SCRA 493 (1999), at p. 499.]

[33] *Vda. de Sta. Romana vs. Philippine Commercial and Industrial Bank*, 118 SCRA 330 (1982), at pp. 334 to 335; *G-Tractors, Inc. vs. Court of Appeals*, 135 SCRA 192 (1985), at p. 210; *Stasa Incorporated vs. Court of Appeals*, 182 SCRA 879 (1990).

[34] Neither this petition nor the original case filed with the regional trial court involves the alienation, disposition or encumbrance of the conjugal property.

[35] Article 124 of the Family Code provides:

The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that once spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

A similar provision is found in Article 96.

[36] Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, vol. I (1990), p. 393.

[37] *Kavinta vs. Castillo, Jr.*, 249 SCRA 604 (1995), at p. 608; *Loyola vs. Court of Appeals*, 245 SCRA 477 (1995), at p. 483; *Gabionza vs. Court of Appeals*, 234 SCRA 192 (1994), at p. 198.

[38] *Petition*, p. 22; *Rollo*, p. 29.

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