

**HEIRS OF BALDOMERO ROXAS Y HERMANOS, REPRESENTED BY
EDUARDO GONZALES, PETITIONERS, VS. HON. ALFONSO S. GARCIA,
PRESIDING JUDGE, BRANCH 18, RTC, TAGAYTAY CITY; REPUBLIC
PLANTERS ...**

G.R. No. 146208. August 12, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via petition for review on certiorari are the Court of Appeals Resolutions[1] dated July 28, 2000 and November 6, 2000 which respectively dismissed petitioners' petition for certiorari and denied their motion for reconsideration of the dismissal.

Two (2) parcels of land with a total land area of 438,018 square meters, more or less, situated in Tagaytay City[2] were surveyed and approved by the Bureau of Lands on March 29, 1941 under Psu-113427 for the heirs of Baldomero Roxas y Hermanos (Roxas property).[3]

A parcel of land also situated in Tagaytay was surveyed under Psu-136750 for Martin Landicho (Landicho property) and was decreed in his name on May 23, 1953[4] in LRC Case No. 167, LRC (GLRO) Record No. N-72008. OCT No. 157 was accordingly issued to Landicho.[5]

"Lot No. 2" of the Landicho property was later sold to Porfirio Beljica who was issued TCT No. 3255.[6]

Beljica in turn sold "Lot No. 2" of the Landicho property to the Taal Development Corporation which was issued TCT No. 3445.[7]

The Taal Development Corporation later mortgaged "Lot No. 2" of the Landicho property to the Republic Planters Bank which eventually acquired it on July 7, 1965 following the foreclosure sale thereof after the former failed to comply with its mortgage obligation. Republic Planters Bank was then issued TCT No. T-4211.[8]

On April 11, 1962, Vicente Singson, Jr., husband of one of the children of the spouses Sixto Roxas and Alejandra Luz – heirs of the late Baldomero Roxas (Roxas), filed an application for registration covering the Roxas property at the then Court of First Instance (CFI) of Cavite, docketed as Case No. N-249, LRC Record No. 22973.[9]

By Decision of April 2, 1963, Branch 3 of the Cavite CFI adjudged in Case No. N-249, LRC Record No. 22973 the registration of the Roxas property in favor of the heirs. By Order of May 23, 1963, the court declared its April 2, 1963 decision final and accordingly ordered the Land Registration Commission (LRC) to issue a decree of confirmation and registration.[10]

The LRC, by Report of October 15, 1963, stated, however, that the confirmation could not be done due to "overlapping claims on the area." [11]

From a Report dated September 5, 1983 prepared by Geodetic Engineer Basilio Cabrera, and a later Report dated

November 12, 1987 prepared by the Chief of the Surveys Division Regional Management Bureau who was directed by the court to comment on Engineer Cabrera's report, it is gathered that Psu-136750 (covering the Landicho property) overlapped Psu N-113427 (covering the Roxas property).[12]

It turned out that in Case No. 167, LRC (GLRO) Record No. N-7208, the alleged overlapping by Psu-136750 of Psu-113427 was overlooked.

Vicente Singson, Jr., in the meantime, died on April 20, 1965.[13]

The Heirs of Roxas later filed in Case No. N-249 LRC Record No. 22973 a motion to intervene dated August 10, 1978[14] which was granted. By Order of June 29, 1988, the land registration court, Branch 17 of the Regional Trial Court (RTC) of Cavite which took over the cases pending before Branch 3 of the former CFI of Cavite, noting that titles to properties cannot be collaterally attacked, directed the parties "to have Plan PSU-113427 amended to exclude the portions already titled [in the name of Landicho] without prejudice to filing the corresponding case for annulment of titles." [15]

By Order[16] of July 2, 1991, the land registration court, resolving two motions to reopen the decree of registration in LRC Case No. N-249, ruled:

x x x

After evidence pro and con for the reopening of this case to determine the merits of the report of the Land Registration Commission of October 15, 1963 which states that there are several overlappings upon the very land subject matter of this application and which have been adjudicated in previous land registration proceedings in which said land had been issued corresponding certificates of title pursuant to the provisions of Act 496 and that only a small portion remains undecreed, counsel for the parties in open Court this morning, after hearing the testimony of Isidro R. Celles, Geodetic Engineer and Chief of the Technical Standards and Surveys of the Bureau of Lands, DENR, testified that the parcels of land subject matter of this proceedings and covered by Plan Psu-113427 is [sic] entirely within the perimeters of the parcel of land surveyed for Martin Landicho and Librado Catapang under Plan Psu-136750 which was subsequently decreed and titled in case N-167, GLRO Rec. No. N-720[0]8 in the name of Martin Landicho precursor of oppositor Republic Planters Bank derived its title.

Thus there is nothing more to be adjudicated in the names of the applicants now the intervenors Heirs of Baldomero Roxas, and only recourse now is to seek the annulment of the certificates of title issued in [LRC] case no. 167 and the reconveyance of the properties in the proper regional trial court.[17]

x x x (Emphasis and underscoring supplied)

By the said Order of July 2, 1991, the land registration court thus set aside its April 2, 1963 decision, recalled its order for the issuance of a decree of confirmation and registration, and dismissed LRC Case No. N-249, without prejudice to the right of the Heirs of Roxas to file the "proper action for annulment and reconveyance [of the Roxas property] in the proper court." [18]

On October 4, 1991,[19] herein petitioners - heirs of Roxas filed before the RTC of Cavite in Tagaytay City a complaint against the Republic Planters Bank for the cancellation of the latter's title over the Landicho property, TCT No. 4211, "to the extent of that portion which overlapped the [Roxas] property." The complaint, now the subject of the present decision, which was docketed as Civil Case No. TG-1212, was later amended[20] to enumerate the names, addresses and civil status of all the heirs of Roxas.

Solid Builders Inc., to which a portion of the Landicho property appeared to have been subsequently sold by Republic Planters Bank and which was allowed to intervene, filed an Answer in Intervention with

Counterclaim.[21] It later filed a Motion for Summary Judgment[22] which was, by Order of January 21, 1997,[23] denied.

Republic Planters Bank then filed its Answer to the Amended Complaint with Counterclaim.[24]

Solid Builders Inc. subsequently filed a Second Motion for Summary Judgment[25] which was, by Order of December 17, 1999, [26] granted. In the same Order, Branch 18 of the RTC of Tagaytay dismissed herein petitioners' complaint for lack of merit, it finding that the only basis of their claim of ownership to the Roxas property, said to have been included in the Landicho title, is Psu-113427, whereas the subsequent transfer of the Landicho property to Republic Planters Bank and later to intervenor Solid Builders, Inc. were evidenced by documents including titles, the existence of which documents petitioners admitted in their Complaint and Amended Complaint.[27]

Petitioners' motion for reconsideration of the dismissal of their complaint having been denied by Order of April 10, 2000, petitioners filed a petition for certiorari with the Court of Appeals.[28]

The appellate court, by Resolution of July 28, 2000,[29] dismissed petitioners' petition for certiorari on the ground that the RTC Tagaytay's order dismissing their complaint is a final, not an interlocutory order, hence, a subject of appeal and not certiorari.

Petitioners' motion for reconsideration of the appellate court's July 28, 2000 Resolution having been denied by Resolution of November 6, 2000[30] for lack of merit and, in any event, the petition for certiorari was filed out of time, they lodged the petition for review on certiorari at bar, submitting the following

x x x

REASONS FOR THE PETITION

- Respondent Court of Appeals erred in holding that the dismissal of the complaint by way of granting private respondents' motion for summary judgment is a proper subject of appeal, not certiorari, despite the grave abuse of discretion committed by public respondent Presiding Judge Alfonso Garcia of the trial court;
- Respondent Court of Appeals also committed error of law in applying the presumption of completeness of service after five (5) days from receipt of the first notice, considering the actual receipt of the registered mail by the petitioners;
- Respondent Court of Appeals gravely abused its discretion in resorting to strict technicality in dismissing the petition for certiorari.[31] (Underscoring supplied)

The petition fails.

It is settled that an order dismissing a complaint is a final, not an interlocutory order, hence, a proper subject of appeal. If indeed petitioners received the December 17, 1999 Order of the trial court dismissing their complaint on February 1, 2000 and filed on February 3, 2000 a motion for reconsideration thereof, the Order denying which motion they received on May 26, 2000, they had fifteen days[32] or until June 8, 2000 to appeal. They, however, did not appeal and instead filed on July 24, 2000 before the Court of Appeals the petition for certiorari.

When the remedy of appeal is available but is lost due to petitioner's own negligence or error in the choice of remedies, resort to certiorari is precluded. That is settled.

Even if, in the greater interest of substantial justice, certiorari may be availed of, it must be shown that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, that is, that the trial court exercised its powers in an arbitrary or despotic manner by reason of passion or personal hostilities, so patent and

gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.[33] Petitioners' assignment of errors of the trial court before the appellate court, to wit:

- PUBLIC RESPONDENT GRAVELY ERRED IN APPLYING THE RULE ON SUMMARY JUDGMENT IN THE CASE AT BAR, THE SAME BEING ONE FOR CANCELLATION OF TITLE OR DECLARATION OF NULLITY OF TITLES, AND THERE BEING SERIOUS AND TRIABLE ISSUES ON THE MERITS, JOINED AFTER PRIVATE RESPONDENTS FILED THEIR ANSWERS TO THE AMENDED COMPLAINT;
- PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION IN APPLYING THE RULING IN ARMY AND NAVY CLUB OF MANILA, INC. VS. COURT OF APPEALS, ET AL., G.R. NO. 110223, APRIL 8, 1997;
- PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT PETITIONERS' ALLEGATION IN THE COMPLAINT ABOUT TRANSFERS OF TITLES TO SUPPOSED SUBSEQUENT PURCHASERS WARRANT DISMISSAL OF THE COMPLAINT THROUGH SUMMARY JUDGMENT.
- PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION, BASED ON THE OPPOSITION FILED BY THE INTERVENOR WHOSE ONLY BASIS FOR INTERVENTION IS A DEED OF PROMISE TO SELL WHICH HAD BEEN PREVIOUSLY DECLARED NULL AND VOID BY ANOTHER COURT OF COMPETENT JURISDICTION.[34] (Underscoring supplied),

shows, however, that what were being assailed were errors not of jurisdiction but of judgment.[35]

Whether a trial court, which has jurisdiction over the person of the parties to, and the subject matter of the case, will grant a motion for summary judgment is within its power or authority in law to perform. Its propriety rests on its sound exercise of discretion[36] and judgment. In the event that it errs in finding that there is no genuine issue to thus call for the rendition of a summary judgment, the resulting decision may not be set aside either directly or indirectly by petition for certiorari, but may only be corrected on appeal or other direct review. Parenthetically, contrary to petitioners' argument that the rule on summary judgment applies to only two kinds of action — an action to recover a debt or a liquidated demand for money, and an action for declaratory relief, the rule is applicable to all kinds of actions. *De Leon v. Faustino*[37] holds so.

It is contended that the procedure of summary judgment is not warranted in the instant case since it is not an action "to recover upon a claim, counterclaim, or cross-claim". It is argued that section 1 of Rule 36 providing for the remedy of summary judgment for the claimant contemplates action or cases which are in the nature of money claims. The contention cannot be sustained. Summary judgment procedure is a method for promptly disposing of actions in which there is no genuine issue as to any material fact. Under this definition and from the provision of section 1 of Rule 36, there would seem to be no limitation as to the type of actions in which the remedy is available, except, of course, where the material facts alleged in the complaint are required to be proved. As observed in the note of the Advisory Committee of the United States Supreme Court, quoted by former Chief Justice Moran in his comments on the Rules of Court (Vol. I, 1957 ed., p. 497) —

x x x

In England it was first employed only in cases of liquidation claims, but there has been a steady enlargement of the scope of the remedy until it is now used in actions to recover land or chattels and in all other actions at law, for liquidated or unliquidated claims, except for a few designated torts and breach of promise of marriage.[38] (Underscoring supplied)

The foregoing discussions leave it unnecessary to pass on the second reason proffered for the petition, that bearing on the timeliness of the filing of the petition for certiorari before the appellate court.

At all events, the remedy of one who has established his ownership over a property but which property has been wrongfully or erroneously registered through fraud or mistake in another's name is, after the lapse of one year from the date of issuance of the questioned decree, not to set aside the decree, it having become incontrovertible and no longer open to review, but to institute an ordinary action in the ordinary court of justice for reconveyance.[39]

If the property, however, has already passed into the hands of an innocent purchaser for value, the remedy is to file an action for damages from the person who allegedly registered the property through fraud,[40] or if he had become insolvent or if the action is barred by prescription, to file an action for recovery against the Assurance Fund under Section 95 of P.D. No. 1529[41] (the Property Registration Decree) within a period of six years from the time the right to bring such action accrues.[42]

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Panganiban, (Chairman), and Corona, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] Rollo at 166-169.

[2] Id. at 46.

[3] Id. at 50.

[4] Amended Complaint in Civil Case No. TG-1212, par. 6, Id. at 47.

[5] Amended Complaint in Civil Case No. TG-1212, par. 11, Id. at 48.

[6] Rollo at 48.

[7] Ibid.

[8] Answer with Counterclaim of Republic Planters Bank to Amended Complaint in Civil Case No. TG-1212, par. 21, Id. at 58, 60.

[9] Rollo at 50.

[10] Amended Complaint, Id. at 44, 50-51.

[11] Id at 51.

[12] CA Rollo at 45-48.

[13] Amended Complaint, par. 23, Id. at 44, 51.

[14] Id., par. 24, Rollo at 51.

[15] CA Rollo at 49-50.

[16] Id. at 39-40.

[17] CA Rollo at 39-40.

[18] Id. at 40.

- [19] Rollo at 77.
- [20] Id. at 44-54.
- [21] Id. at 63-76.
- [22] Id. at 105-107.
- [23] Id. at 108-109.
- [24] Id. at 58-76.
- [25] Id. at 115-118.
- [26] Id. at 77-82.
- [27] Id. at 78-79.
- [28] Id. at 23-41.
- [29] Id. at 166-167.
- [30] Id. at 168-169.
- [31] Id. at 15.
- [32] Rule 41, Sec. 3, 1997 RULES OF CIVIL PROCEDURE.
- [33] Intestate Estate of Carmen de Luna, et al. v. Intermediate Appellate Court, 170 SCRA 246, 254 (1989).
- [34] Rollo at 31-32.
- [35] II J. FERIA AND M. S. NOCHE, CIVIL PROCEDURE ANNOTATED 456 (2001).
- [36] I J. FERIA AND M. S. NOCHE, CIVIL PROCEDURE ANNOTATED 606 (2001).
- [37] 110 Phil. 249 (1960).
- [38] Supra at 253-254.
- [39] Vda. de Recinto v. Inciong, 77 SCRA 196, 201 (1977).
- [40] Ibid.
- [41] P.D. No. 1529, Sec. 95. Action for compensation from funds. – A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system of arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.
- [42] Section 102, P.D. 1529.

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