BIBLIA T. BANAGA, PETITIONER, VS. HON. JOSE S. MAJADUCON, PRESIDING JUDGE REGIONAL TRIAL COURT, COURT, BRANCH XXIII, 11TH JUDICIAL REGION, GENERAL SANTOS CITY AND CANDELARIO S. ...

G.R. NO. 149051. June 30, 2006

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Court of Appeals' Decision in CA-G.R. SP No. 63375 promulgated on July 4, 2001.[1] The Court of Appeals' Decision dismissed Biblia T. Banaga's petition for certiorari, prohibition and mandamus, which sought to nullify three orders issued by the Regional Trial Court (RTC), Branch 23 of General Santos City, in connection with the execution of the final judgment in G.R. No. 127941.

The instant petition had its genesis from an action for redemption of a parcel of land situated in General Santos City filed by petitioner Banaga against private respondent Candelario Damalerio before the RTC, Branch 23, General Santos City. The trial court dismissed petitioner's complaint, prompting her to elevate the matter to the Court of Appeals which reversed the trial court and upheld petitioner's right to redeem the property.[2] Private respondent's appeal from said decision via a petition for review on certiorari docketed as G.R. No. 103204 was denied in this Court's resolution dated February 19, 1992.[3]

However, petitioner failed to exercise her right to redeem within the given period. Private respondent moved to declare the termination of the 30-day redemption period, but the trial court denied the same in an Order issued on May 29, 1992.[4] Thus, private respondent filed a petition for certiorari praying for the nullification of said order. The Court of Appeals granted private respondent's petition, prompting petitioner to appeal to this Court. In the Court's resolution in G.R. No. 113534,[5] the Court denied petitioner's appeal for lack of merit. The decision became final and executory and a writ of execution issued as a consequence. However, the Register of Deeds refused to issue a certificate of title in the name of private respondent.

Litigation commenced once again when private respondent elevated the case to the Court of Appeals via a petition for certiorari and mandamus.[6] The Court of Appeals' Decision,[7] which was affirmed by this Court in its decision in G.R. No. 127941[8] promulgated on January 28, 1999, directed the Register of Deeds to issue certificates of title in the name of private respondent and the trial court to issue a writ of execution and a writ of possession in favor of respondent. The dispositive portion of the Court of Appeals' decision, as affirmed by this Court, reads:

> WHEREFORE, in view of all the foregoing considerations, the petition is GRANTED. Judgment is hereby rendered:
>
> 1)

setting aside the orders of the respondent judge dated January11, 1995 and March 29, 1996;

2)

declaring the title issued to Biblia Toledo-Banaga, Jovita Tan and to those other subsequent transferee or transferees, if any, as null and void;

3)

ordering the Register of Deeds of General Santos City to issue new certificates of title to Candelario Damalerio over the parcels of land in question;

4)

ordering the respondent court to issue writ of execution for the enforcement of this decision and of the decision in CA-G.R. SP No. 29868 (sic), as well as a writ of possession for the delivery to petitioner Damalerio of the physical possession of the parcels of land subject matter of this case.

SO ORDERED.[9]

The records of the case were subsequently remanded to the trial court for execution of judgment. Thus, on May 10, 1999, upon motion by private respondent, the trial court issued a writ of execution and a writ of possession for the delivery of the subject property, denominated as Lot 2-G-2, to private respondent. The corresponding certificate of title was also issued to private respondent in consonance with the final decision. Private respondent was placed in possession of Lot 2-G-2, which he fenced with galvanized iron sheets.

Controversy arose anew when private respondent moved for the issuance of a special order for demolition of a structure alleged to be erected within Lot 2-G-2. Petitioner objected, claiming that the structure is situated within Lot 2-G-1, the adjacent property retained and still owned by petitioner. The two lots were previously part of a bigger parcel of land before its subdivision sometime in the 1960's. To resolve the issue, the trial court directed both parties to conduct a joint survey of the two lots. As the reports submitted by the two surveyors revealed conflicting results, petitioner and private respondent jointly manifested that a relocation survey be made by the survey team from the Department of Environment and Natural Resources (DENR). They further agreed before the trial court that they will abide and honor the findings and recommendations of the survey team.[10] Upon the trial court's order, Engr. Gerardo Dida of the DENR conducted a relocation survey on January 13 and 14, 2000. The report submitted by Engr. Dida indicated that Lot 2-G-1 had encroached on private respondent's Lot 2-G-2 by some 136 square meters.

On March 13, 2000, petitioner filed an Urgent Omnibus Motion for the conduct of a verification survey. In her motion, petitioner alleged that the survey conducted was incomplete and prayed that a verification survey be conducted first before Engr. Dida is called to testify on the survey report. Without ruling on the petitioner's motion, on March 30, 2000, the trial court proceeded ex-parte in taking the testimony of Engr. Dida and directed both parties to submit their respective memoranda.[11]

The trial court issued the first assailed order on August 4, 2000, approving the report submitted by Engr. Dida. Petitioner filed a notice of appeal on the August 4, 2000 Order of the trial court but the same was denied when the

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trial court issued the second assailed order on October 2, 2000. Petitioner moved for the reconsideration of the October 2, 2000 Order but the trial court denied the motion through the third assailed order of February 9, 2001.

Thereafter, petitioner instituted a special civil action for certiorari, prohibition and mandamus with a prayer for the issuance of a writ of preliminary injunction with the Court of Appeals, seeking the nullification of the aforesaid subject orders of the trial court and the approval of petitioner's notice of appeal. Petitioner questioned the trial court's dismissal of its notice of appeal on the ground that the trial court has the ministerial duty to approve the notice of appeal duly filed on time and to transmit the records of the case to the appellate court. On March 13, 2001, the Court of Appeals issued a temporary restraining order to prevent the execution of the assailed orders and the demolition of the structures alleged to be encroaching upon private respondent's property.

On July 4, 2001, the Court of Appeals dismissed the petition on the ground that petitioner failed to show that the trial court committed grave abuse of discretion in approving the survey report submitted by Engr. Dida. Moreover, it ruled that the resolution of the boundary dispute was an incident of the execution proceedings; thus, no appeal may be taken from the trial court's order approving the survey report in accordance with Section 1(f), Rule 41[12] of the Rules of Court. The appellate court also declared petitioner to be bound by her manifestation to respect the survey report. In any case, petitioner should have first moved for the reconsideration of the order approving the survey report instead of immediately filing a notice of appeal, said the appellate court.

Not satisfied with the Court of Appeals' Decision, petitioner comes to this Court, imputing the following errors:

> - The Honorable Court of Appeals seriously erred when It ruled that the trial judge did not commit any grave abuse of discretion in issuing the challenged Order dated 04 August 2001 and when it denied due course to petitioner's petition and upheld the denial by the trial court of petitioner's Notice of Appeal from its assailed Order.
>
> - The Honorable Court of Appeals seriously erred when it held that petitioner had acquiesced to the execution of the assailed Order, hence, he is no longer allowed to appeal from such order.
>
> - The Honorable Court of Appeals seriously erred when it held that petitioner was estopped from assailing the challenged Order.[13]

The instant petition poses the fundamental issue of whether or not the trial court correctly denied petitioner's notice of appeal notwithstanding petitioner's allegation that the Order dated August 4, 2000 varied the terms of the final judgment in G.R. No. 127941.

The Court of Appeals ruled that the determination of the boundary limits of Lot 2-G-2 was a matter incidental to the execution of the decision in the main case; hence, the trial court's order of August 4, 2000, which approved the survey report submitted by Engr. Dida, was not appealable in view of the proscription against appeal from an order of execution. In like manner, private respondent contends that with the adoption of the 1997 Rules of Civil Procedure, only the remedy of a special civil action of certiorari is available to a party prejudiced by an improper or irregular execution.

The Court does not agree.

Even prior to the promulgation of the 1997 Rules of Civil Procedure, the rule that no appeal lies from an order or writ directing the execution of a final judgment, for otherwise a case will not attain finality, is not absolute since a party aggrieved by an improper or irregular execution of a judgment is not without a remedy. Thus, in Limpin v. Intermediate Appellate Court,[14] the Court enumerated the exceptional circumstances where a party may elevate the matter of an improper execution for appeal, to wit:

> There may, to be sure, be instances when an error may be committed in the course of execution proceedings

> prejudicial to the rights of a party. These instances, rare though they may be, do call for correction by a superior court, as where –
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> 1)
>
> the writ of execution varies the judgment;
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> 2)
>
> there has been a change in the situation of the parties making execution inequitable or unjust;
>
> 3)
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> execution is sought to be enforced against property exempt from execution;
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> 4)
>
> it appears that the controversy has never been subject to the judgment of the court;
>
> 5)
>
> the terms of the judgment are not clear enough and there remains room for interpretation thereof; or
>
> 6)
>
> it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority;[15]

In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or certiorari), or by a special civil action of certiorari, prohibition, or mandamus.[16]

The aforementioned pronouncement has been reiterated in cases subsequent to the adoption of the 1997 Rules of Civil Procedure.[17] The Court finds no sound justification to abandon the aforequoted pronouncement insofar as it recognizes the filing of an ordinary appeal as a proper remedy to assail a writ or order issued in connection with the execution of a final judgment, where a factual review in the manner of execution is called for to determine whether the challenged writ or order has indeed varied the tenor of the final judgment.

To rule that a special civil action for certiorari constitutes the sole and exclusive remedy to assail a writ or order of execution would unduly restrict the remedy available to a party prejudiced by an improper or illegal execution. A special civil action for certiorari is not a mode of appeal where the appellate court reviews the errors of fact or law committed by the lower court. The issue in a special civil action for certiorari is whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.[18]

In the instant case, an ordinary appeal is the more proper and adequate remedy to address the factual allegations raised by petitioner. Petitioner's vigorous objection to the survey report centered on her position that it would alter

the present boundaries and result to awarding to private respondent a portion of Lot 2-G-1 belonging to her. In particular, petitioner stressed that the survey conducted was inadequate as it was limited only to the properties registered in the name of private respondent and it did not indicate the relative positions of the corners of the other adjacent lots in relation to the corners of Lot 2-G-2.

From a perusal of the survey report it appears that the relocation of the boundaries of Lot 2-G-2 would reposition said lot to the east by a few meters, resulting in the overlapping of its eastern boundaries with that of Lot 2-G-1, the adjacent lot belonging to petitioner. Thus, petitioner is assailing the accuracy of the survey report as it would result in either diminishing the area of Lot 2-G-1 or moving the area of said lot eastward so as to occupy the adjoining street. The survey report appears to relocate also the boundary limit of private respondent's Lot 2-G-2 also eastward from the direction of the other street. The determination of the correctness of the survey findings in relation to the boundary limits of Lot 2-G-2 and Lot 2-G-1 is ultimately a factual question. Not only that, the effect of the survey findings on the boundaries of the other adjacent lots not subject of the main case becomes an issue. The technical findings of the surveyor as well as the trial court's appreciation thereof must undergo the scrutiny of the appellate process. The trial court's order adopting and approving the survey report cannot be regarded as final and unappealable.

In addition, allegations of fraud, involving alterations in the technical descriptions used as basis of the survey, were raised by petitioner. The question of whether or not the trial court committed an error in judgment insofar as it upheld the accuracy of the survey report in light of petitioner's allegations can be resolved only by way of ordinary appeal.

Therefore, the more appropriate remedy is an ordinary appeal instead of a petition for certiorari, contrary to the stance of private respondent. Raised by petitioner is the factual issue of discrepancy or alterations in the lot data computations used as basis for the survey. This calls for a review of the case records.

It was also error for the appellate court to rule as it did that petitioner should have first sought clarification with the trial court or moved for the reconsideration of the August 4, 2000 Order before filing the notice of appeal in order to clarify the import of the court's approval of the survey report in relation to the writ of execution issued. From a reading of the August 4, 2000 Order, there is no question that the trial court found the survey report accurate despite petitioner's allegation that it was incomplete and not based on authentic survey records with the DENR. Besides, petitioner had already raised her objections in the Urgent Omnibus Motion and extensively discussed them in her memorandum. The trial court's failure to rule on petitioner's Urgent Omnibus Motion and its approval of the survey report only indicate that the trial court found petitioner's arguments to be without merit. A motion for reconsideration or clarification would only be repetitious of petitioner's allegations and arguments and come out as useless in the trial court's reckoning. Moreover, a motion for reconsideration is not required before appealing a judgment or final order.

While it is correct that petitioner bound herself to abide by the findings of the survey team, the waiver does not include future fraud. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.[19] Petitioner brought up allegations of discrepancy and alterations in the lot data computations used in the survey when compared to data found in DENR records. Petitioner's waiver cannot be taken to cover allegations of fraud.

All given, the Court of Appeals erred in ruling that the trial court did not commit grave abuse of discretion in dismissing petitioner's notice of appeal.

Private respondent contends that the petition should be dismissed for violating Section 11, Rule 13 of the Rules of Court. In his affidavit of service, petitioner's counsel stated that copies of the petition were furnished the

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parties/counsel via registered mail due to the distance of the offices of petitioner and private respondent's counsels. According to private respondent, said statement is false because the distance between the offices is only about 15 meters.

In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the prima facie merit of the pleading sought to be expunged for violation of Section 11.[20] The basis of allowing the appellate review of the trial court's order approving the survey is to afford petitioner the opportunity to prove her claim that she bears the risk of being illegally deprived of a property belonging to her. Thus, the dismissal of this petition on a mere technicality will ignore the constitutional provision against depriving a person of his property without due process of law. Besides, the proximity between the offices of opposing counsel had not been clearly established. The Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.[21]

WHEREFORE, the instant petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 63375 is REVERSED and SET ASIDE. A new judgment is entered NULLIFYING the orders dated February 9, 2001 and October 2, 2000 of the Regional Trial Court, Branch 23, General Santos City.

The trial court is directed to give due course to petitioner's appeal of its Order dated August 4, 2000 and transmit the records of the case to the Court of Appeals after payment of appellate docket and other lawful fees with deliberate dispatch.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1] Penned by Bernardo P. Abesamis, J., Acting Chairman, and concurred in by Eliezer R. De Los Santos and Remedios Salazar-Fernando, JJ.; Rollo, pp. 35-45.

[2] Records, p. 225.

[3] Candelario Damalerio v. Court of Appeals, et al., February 19, 1992; Records, p. 222.

[4] Records, p. 262.

[5] Biblia Toledo-Banaga v. Court of Appeals, et al., May 11, 1994; Records, p. 996.

[6] Candelario Damalerio v. Hon. Jose Orlino, et al.; CA-G.R. SP No. 40348; Records, p. 1248.

[7] CA-G.R. SP No. 40348, November 7, 1996; Records, pp. 1271-1297.

[8]Toledo-Banaga v. Court of Appeals, 361 Phil. 1006 (1999).

[9]Id. at 1014.

[10] CA decision, p. 8; rollo, p. 37.

[11] Id.

[12]Section 1. Subject of Appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. No appeal may be taken from: x x x

(f) An order of execution; x x x x.

[13] Rollo, p. 12.

[14] G.R. No. L-70987, January 30, 1987, 147 SCRA 516.

[15] Id. at 479.

[16] Id.

[17] Paulino v. Court of Appeals, et al, G.R. No. 110271, February 28, 1994, 230 SCRA 475; Reburiano v. Court of Appeals, 361 Phil. 294 (1999); Baluyut v. Guiao, 373 Phil. 1013 (1999).

[18] Yasuda v. Court of Appeals, 386 Phil. 594, 602 (2000).

[19] CIVIL CODE, Art. 1171.

[20] Solar Team Entertainment, Inc. v. Ricafort, 355 Phil. 404, 414 (1998).

[21] RULES OF COURT, Rule 1, Sec. 6.

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