

MILAGROS G. FLORES, PETITIONER, VS. TERESITA BERCASIO AND JOVITA CASTILLANO, RESPONDENTS.*G.R. No. 149224. September 01, 2004*

Ponente: CALLEJO, SR., J.

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Before the Court is a petition for review on certiorari to set aside the Resolution[1] of the Court of Appeals dated April 27, 2001 in CA-G.R. SP No. 63887, denying the petitioner's motion for extension of time to file petition for certiorari and dismissing the petition, and the Resolution[2] dated July 17, 2001, denying the motion for reconsideration thereon.

The Antecedents

Petitioner Milagros G. Flores, 50 years old, was a registered nurse based in New York, United States of America. She owned a parcel of land located at No. 16 Aguila St., Dizon Subdivision, Baguio City, covered by Transfer Certificate of Title (TCT) No. 44901.[3]

On May 3, 1996, the petitioner executed a Deed of Sale in the United States in which she sold the property to respondents Teresita Bercasio and her sister Jovita Castellano for US\$75,000, with a downpayment of US\$38,000, the balance to be paid in thirty-six (36) monthly installments commencing on July 1, 1996. The respondents executed a deed of real estate mortgage over the property in favor of the petitioner as security for the payment of the balance of the purchase price.[4] The respondents, thereafter, returned to the Philippines and took possession of the property.

On June 6, 1999, the petitioner and her husband Federico G. Flores filed a Complaint[5] for Foreclosure of Mortgage and Damages against the respondents before the Regional Trial Court of Baguio City, Branch 7. The case was docketed as Civil Case No. 4410-R. In their complaint, the petitioner and her co-plaintiff alleged that they were the registered owners of the property, and that the respondents failed to pay the installments due thereon. Thus:

- Defendants violated the terms of the installment payment stipulated in Annex "B" and that of the balance of \$37,000 and the stipulated 10% interest per year they have only paid the plaintiffs US\$8,300.00 as follows: \$500.00 in March 1997, \$5,800.00 in September 1997, \$2,000.00 in September 1997, and refused without just cause to pay the balance.

- As of June 1, 1999, defendants are indebted to the plaintiffs in the total sum of US\$39,800.00 computed as follows which they have refused to pay without just cause:

a) Principal -----

\$37,000.00

b) Interest: \$37,000 x 10% = \$3,700 x 3 years -

11,100.00

\$48,100.00

Less payments -----

8,300.00

Balance

\$39,800.00

plus legal interest on the unpaid installments from their respective due dates.

- For having been compelled to institute this suit by defendants' refusal, in gross and evident bad faith, to perform their just, valid, and demandable obligation, plaintiffs engaged the services of counsel for a fee of P85,000.00 plus P1,500.00 per court appearance of their counsel and will spend for litigation in [an] estimated sum of P200,000.00 which the defendants should be ordered to pay.[6]

The petitioner and her husband prayed that, after due proceedings, judgment be rendered in their favor, as follows:

- [O]rdering the defendants, jointly and severally, to pay unto the Honorable Court within the reglementary period the sum of US\$39,800.00 with legal interest on the unpaid installments on their respective due dates, until the same is fully paid, plus the additional sums of P85,000.00 as attorney's fees, plus whatever appearance fees plaintiffs would be paying their counsel at P1,500.00 per court appearance, and P200,000.00 or which may be proved during the trial as litigation expenses, plus costs of this suit; and

- [I]n default of such payment, the above-described property and the house and all other improvements existing thereon be ordered sold to pay off the above-mentioned mortgaged debt and its accumulated legal interests, attorney's fees, litigation expenses and costs.

Plaintiffs further pray for such other reliefs as are just and equitable in the premises.[7]

Refuting the petitioner's allegations, the respondents averred in their answer to the complaint that they had already paid the balance of US\$37,000 and, in fact, even made an overpayment amounting to US\$6,704.[8] As counterclaim, the respondents sought moral damages, attorney's fees and costs.

At the pre-trial, the petitioner averred that she was the sole registered owner of the property and amended the complaint by dropping her husband as plaintiff.[9] Thereafter, trial ensued in due course.

On December 11, 2000, the trial court rendered judgment ordering the dismissal of the case for the petitioner's failure to implead her husband, an indispensable party. The fallo of the decision reads:

WHEREFORE, in view of the foregoing, the instant case is hereby ordered DISMISSED on the ground that the plaintiff, Milagros G. Flores, has no legal capacity to bring the action without joining her husband Federico G. Flores.

SO ORDERED.[10]

The petitioner's counsel received on January 3, 2001 a copy of the trial court's decision and, on January 11, 2001, filed a Notice of Appeal[11] of the decision to the Court of Appeals. The trial court issued an Order on January 25, 2001 giving due course to the appeal.[12]

On March 20, 2001, while the case was pending appeal in the CA, the petitioner filed in the same court a motion for leave and extension of time to file petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.[13] She alleged therein that she made a mistake in filing an ordinary appeal, in lieu of a petition for certiorari, the decision of the court a quo being "not appealable." The petitioner prayed for a fifteen-day extension, reckoned from receipt of the CA's resolution granting her leave of court to file the petition, or up to March 31, 2001, whichever came first.[14]

In the meantime, on April 4, 2001, the CA received the petitioner's petition for certiorari (ex abundanti cautela) which the petitioner filed via registered mail on March 26, 2001.[15]

On April 27, 2001, the CA issued a Resolution[16] denying the petitioner's motion for extension. The petition for certiorari was, likewise, dismissed on the ground that even if the motion for extension of time to file her petition was granted, such extension could not exceed fifteen (15) days, or only up to March 19, 2001. The appellate court ruled that the petition was filed out of time since it was filed only on March 26, 2001.

The petitioner's motion for reconsideration of the resolution was denied by the CA on July 17, 2001.

The petitioner assails the resolution of the CA, contending that:

THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND CONTRAVENED APPLICABLE RULES AND JURISPRUDENCE IN:

- DENYING PETITIONER'S MOTION FOR LEAVE AND EXTENSION OF TIME TO FILE PETITION FOR CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE, DESPITE PRESENCE OF COMPELLING REASON FOR ITS GRANT;
- DISMISSING PETITIONER'S PETITION FOR CERTIORARI, DESPITE ITS FILING WITHIN THE EXTENSION PERIOD SOUGHT AND DESPITE BEING MERITORIOUS;
- DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[17]

The petition is denied due course.

First. The petitioner had sixty (60) days from January 5, 2001 or until March 6, 2001 within which to file her petition for certiorari in the CA. Indeed, while the CA may grant for compelling reasons an extension of time for the filing of a petition before it, such extension should not exceed fifteen days. Thus, as correctly ruled by the appellate court, even if it had granted the petitioner's motion for extension of fifteen (15) days within which to file the petition or until March 21, 2001, the petition should be denied for having been filed out of time, since the petitioner filed her petition only on March 26, 2001, well beyond the period therefor.

Second. The assailed decision, even if erroneous, was merely an error of judgment and not an error of jurisdiction. Hence, the proper remedy of the petitioner was to appeal by a writ of error from the decision of the RTC.[18]

Third. The petitioner had a plain, speedy and adequate remedy in the ordinary course of law, namely, an appeal by writ of error from the said decision; as such, the petition is inappropriate.[19] The remedy of appeal and a petition for certiorari are mutually exclusive.[20]

We find that the petitioner's plea for a relaxation of the Rules of Court, in the interest of substantial justice, is

barren of merit. It must be stressed that rules of procedure must be faithfully followed in the absence of persuasive reason to deviate therefrom, as in this case.[21] Besides, the petitioner still has the remedy of appeal in the CA.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED DUE COURSE. Costs against the petitioner.

SO ORDERED.

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

[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Remedios Salazar-Fernando and Rebecca De Guia-Salvador, concurring.

[2] Rollo, pp. 121-122.

[3] CA Rollo, p. 8.

[4] Id. at 9.

[5] Id. at 8.

[6] Id. at 9-10.

[7] Id. at 10-11.

[8] Id. at 47.

[9] Id. at 31-32.

[10] Id. at 49.

[11] Id. at 50.

[12] Id. at 51.

[13] Id. at 2.

[14] Id at 4-6.

[15] Id. at 56.

[16] Id. at 134.

[17] Rollo, p. 14.

[18] In *Fortich v. Corona*, 289 SCRA 624 (1998), we ruled that:

... An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. ...

[19] *Heirs of Pedro Atega v. Garilao*, 357 SCRA 203 (2001).

[20] *Obando v. Court of Appeals*, 366 SCRA 673 (2001).

[21] See *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 334 SCRA 305 (2000).

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