YOLANDA R. BALAYAN, ASSISTED BY HER HUSBAND JUAN UNARI, AND FLORDELIZA JIMENEZ, PETITIONERS, VS. MIGUEL ACORDA, RESPONDENT.

G.R. NO. 153537. May 05, 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 assailing the May 16, 2002 Order of the Regional Trial Court (RTC), Branch 18, Ilagan, Isabela in Civil Case No. 1168. The assailed Order denied petitioners' motion for reconsideration of the RTC's Order dated November 22, 2001, which gave due course to respondent's petition for certiorari.

The instant petition originated from two separate complaints for accion publiciana filed by petitioners Yolanda R. Balayan and Flordeliza Jimenez with the Municipal Circuit Trial Court (MCTC) of Gamu-Burgos. Petitioner Balayan's complaint was docketed as Civil Case No. 757-96 while that of petitioner Jimenez was docketed as Civil Case No. 758-96. Named as defendant in both complaints was respondent Miguel Acorda. Subject of Civil Case No. 757-96 was a parcel of land situated at Barangay Upi, Gamu, Isabela, known as Lot 1 of subdivision plan Psd-2-02-017333 and registered as TCT No. T-233887 in the name of Spouses Yolanda Balayan and Juan Urani. Subject of Civil Case No. 758-96 was a parcel of land adjacent to Lot 1, known as Lot 2 of subdivision plan Psd-2-02-017333 and registered as TCT No. T-151149 in the name of petitioner Jimenez. Both complaints alleged that respondent entered into the subject parcels of land sometime in January 1996 and planted agricultural crops thereon. Respondent allegedly refused to heed petitioners' demand to vacate, prompting the latter to file the aforementioned civil cases.

Respondent denied the allegations and claimed that he was the actual owner of the lots, having been in possession thereof as early as 1987 when he bought the same from a certain Lucia Rosete. Respondent alleged that petitioners' titles were spurious and, thus, sued for quieting of title by way of a counterclaim.

After joinder of issues and the completion of a relocation survey, petitioners moved for a summary judgment, which the MCTC granted.

On November 9, 1998, the MCTC rendered separate judgments in Civil Cases Nos. 757-96 and 758-96 in favor of both petitioners by ordering respondent to vacate the properties in question.

On January 25, 1999, petitioners jointly moved for the issuance of execution orders in the two civil cases as the period of appeal had elapsed without respondent filing an appeal. On May 25, 2000, the MCTC issued an order directing the issuance of a writ of execution. On October 19, 2000, the MCTC issued the writ of execution in both civil cases.

On February 12, 2001, respondent filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with the RTC, Ilagan, Isabela. The petition, docketed as Civil Case No. 1168, prayed for the annulment

of the May 25, 2000 MCTC order for the issuance of a writ of execution. In support of his petition for certiorari, respondent claimed that he had no knowledge of the November 9, 1998 Decision in Civil Case Nos. 757-96 and 758-96 until January 22, 1999. Respondent claimed that he forthwith filed a notice of appeal in both civil cases, which petitioners countered by filing a motion to dismiss the notice of appeal. According to respondent, without first ruling on his notice of appeal or on petitioners' motion to dismiss, MCTC Judge Angerico B. Ramirez issued the assailed order directing the issuance of a writ of execution. Respondent further alleged that despite the issuance of the writ of execution on October 19, 2000 and its implementation on December 16, 2000, no sheriff's return was issued and could be found in the case records.

Petitioners filed an answer to the petition for certiorari, arguing, among others, that the petition was filed beyond the reglementary period of sixty (60) days from the receipt of the assailed order. On this score, the RTC dismissed respondent's petition in an Order issued on July 6, 2001. The RTC, however, indicated in the same Order that the failure of MCTC Judge Ramirez to resolve respondent's notices of appeal and petitioners' motion to dismiss the notices of appeal constituted a "patent and gross abuse of discretion as to amount to an evasion of positive duty or to virtual refusal to perform a duty enjoined by law."[1]

Relying upon said pronouncement, respondent moved for the reconsideration of the July 6, 2001 Order on the ground that the May 25, 2005 Order may be assailed anytime as it was void for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Respondent also argued that the petition for certiorari was filed within the reglementary sixty (60)-day period reckoned from the implementation of the writ of execution on December 16, 2000.

In an Order issued on November 22, 2001, the RTC granted respondent's motion for reconsideration and nullified the May 25, 2000 Order of MCTC Judge Ramirez and all processes issued pursuant thereto. Thereafter, petitioners sought the reconsideration of the November 22, 2001 Order but the RTC denied the same for lack of merit when it issued the assailed Order dated May 16, 2002.

Hence, the instant petition, mainly raising the issue of whether the RTC correctly gave due course to respondent's petition for certiorari, which sought to nullify the May 25, 2000 Order of MCTC Judge Ramirez. Citing Section 4, Rule 65 of the 1997 Rules of Civil Procedure,[2] petitioners contend that the RTC erred in giving due course to respondent's petition for certiorari which was filed out of time.

The petition is meritorious.

It bears emphasis that the special civil action for certiorari is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for a lapsed or lost appeal.[3] Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.[4] Also, generally, a motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary writ of certiorari since a motion for reconsideration is still considered an adequate remedy in the ordinary course of law. The rationale for the filing of a motion for reconsideration is to give an opportunity to the lower court to correct its imputed errors. Generally, only when a motion for reconsideration has been filed and subsequently denied can petitioner avail of the remedy of the writ of certiorari.[5]

In the instant case, respondent filed a petition for certiorari to annul the May 25, 2000 Order directing the issuance of a writ of execution subsequently issued on October 19, 2000. While it is true that no appeal may be taken from an order of execution,[6] certiorari, however, is not the only available remedy to respondent. He could have easily

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filed with the MCTC a motion to quash said order and the writ of execution on grounds stated in the petition for certiorari, to allow the MCTC the opportunity to correct its imputed errors. Before invoking the certiorari jurisdiction of the RTC, respondent should have waited for the MCTC to resolve the matters raised in the motion to quash the writ of execution and to deny said motion. This respondent failed to do. The records do not indicate that respondent was barred from filing a motion to quash the order and writ of execution for reasons other than his own omission. Respondent has only himself to blame for immediately resorting to the filing of a petition for certiorari without first availing of the other reliefs provided by law. Thus, the petition for certiorari filed with the RTC should have been dismissed outright for being an inappropriate remedy.

Assuming without conceding that the petition for certiorari is the only available recourse to respondent, the petition should be dismissed just the same for having been filed out of time. Respondent filed the petition for certiorari on February 12, 2001, or more than three months after the writ of execution was issued. Undoubtedly, the belated filing of the petition for certiorari was fatal to respondent's cause.

Certiorari being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rule laid down by law.[7] The New Rules on Civil Procedure, in Section 4, Rule 65 thereof, prescribes a period of 60 days within which to file a petition for certiorari. The 60-day period is deemed reasonable and sufficient time for a party to mull over and prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case. For these reasons, the 60-day period ought to be considered inextendible.[8]

WHEREFORE, the petition for review on certiorari is GRANTED. The November 22, 2001 Order of the Regional Trial Court, Branch 18, Ilagan, Isabela in Civil Case No. 1168 is REVERSED and SET ASIDE and its Order dated July 6, 2001 is REINSTATED.

SO ORDERED.

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

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[1]Rollo, p. 58.

[2] Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by A.M. No. 00-2-03-SC (effective September 1, 2000), states: 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.

[3] Heirs of Lourdes Potenciano Padilla v. Court of Appeals, G.R. No. 147205, March 10, 2004, 425 SCRA 236, 242.

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[4] David v. Cordova, G.R. No. 152992, July 28, 2005, 464 SCRA 384, 395.

[5] National Housing Authority v. Court of Appeals, 413 Phil. 58, 63 (2001).

[6] Sec. 1, Rule 41 of the Rules of the Rules of Civil Procedure states: Subject of an 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

[7] Matagumpay Maritime Co., Inc., v. Dela Cruz, G.R. No. 144638, August 9, 2005, 466 SCRA 130, 134.

[8] Yutingco v. Court of Appeals, 435 Phil. 83, 91 (2002).

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