

**TEODORA A. CAPACETE AND RODOLFO CAPACETE, PETITIONERS,
VS. VENANCIA BARORO, MUNICIPAL TRIAL COURT CABUYAO,
LAGUNA AND PROVINCIAL SHERIFF OF LAGUNA STATIONED AT
BIÑAN, LAGUNA, RE...**

G.R. No. 154184. July 08, 2003

Ponente: PUNO, J.

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PUNO, J.:

Before us is a petition for review on certiorari assailing two Resolutions, dated November 28, 2001 and July 3, 2002, respectively, of the Court of Appeals in CA-G.R. SP No. 67557.

Since 1956, petitioners Capacetes have been in possession of a parcel of land subject of the present controversy. The land, identified as Lot 88, Cad No. 455-D, is located at Barangay Marinig, Cabuyao, Laguna and has an area of about nine hundred nine square meters (909 sq.m.). On November 3, 1975, respondent Venancia Baroro applied for free patent over it with the Bureau of Lands. Her application, opposed by the petitioners, was denied.

On March 14, 1977, respondent Baroro and her husband Emilio Galang commenced an action in the Municipal Trial Court of Cabuyao, Laguna for unlawful detainer against the petitioners, docketed as Civil Case No. 89. The spouses contended that the petitioners took possession of the disputed property in 1957 by mere tolerance from them. In their defense, petitioners justified their occupancy of the land on the basis of a purported contract of sale showing that they bought it from respondent Baroro in 1956. The MTC rendered a decision on January 4, 1989, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, judgment is hereby rendered for the plaintiffs Emiliano Galang and Venancia Baroro and against the defendants, spouses Rodolfo Capacete and Teodora Capacete.[1]

Petitioners sought appeal from the above decision. Their notice of appeal, however, was not given due course for having been filed out of time.

On November 11, 1990, petitioners filed a complaint against respondent Baroro with the Regional Trial Court-Branch 25 of Biñan, Laguna for accion reivindicatoria, annulment of decision and quieting of title with prayer for temporary restraining order/preliminary injunction with damages, docketed as Civil Case No. B-3433. They claimed that: (1) they bought the land from her sometime in 1956 for the sum of one thousand pesos (P1,000.00); (2) they actually paid an initial sum of five hundred forty pesos (P540.00), with the promise to pay the balance a year after; (3) they took immediate possession of the property and introduced several improvements thereon including a house and some fruit-bearing trees; and (4) a year later, she refused to receive the payment for the remaining balance of four hundred sixty pesos (P460.00).

In her answer, respondent Baroro alleged that she owns the land by virtue of her open, peaceful and uninterrupted possession of it for more than thirty years. She claimed that the land had been declared for taxation purposes by her father Anastacio Baroro, as early as October 31, 1915. She eventually declared it in her own name.

After trial, the lower court rendered a decision on March 17, 1998 in favor of respondent Baroro, giving little credence to the purported contract of sale. Its dispositive portion reads as follows:

WHEREFORE, judgment is hereby rendered:

- a) Declaring the Decision, dated January 4, 1989, of the Municipal Trial Court of Cabuyao in Civil Case No. 89 to be valid and final and executory, and directing the Provincial Sheriff to immediately implement the same;
- b) as between plaintiffs Alejandro Capacete and Rolando Capacete, on the one hand and Venancia Baroro, on the other hand, declaring the latter to be the legitimate owner of Lot 88, Cad. No. 455-D, with an area of 909 square meters, and located at Barangay Marinig, Cabuyao, Laguna;
- c) ordering plaintiffs Alejandro Capacete and Rodolfo Capacete to pay jointly and severally unto defendant Venancia Baroro the following sums:
 - i) the amount of P200.00 as rental (sic) for Lot 88 to be computed from the time of filing of the Complaint in said Civil Case No. 89 on March 14, 1977 up to the time they vacate said parcel of land;
 - ii) the amount of P100,000.00 as moral damages; and
 - iii) the sum of P30,000.00 as attorney's fees.

Plaintiffs' application for writ of preliminary injunction is hereby DENIED.

SO ORDERED.[2]

Petitioners filed an appeal with the Court of Appeals. However, their then counsel, who was allegedly bedridden and who eventually died, failed to pay the docket and other fees within the reglementary period. For this reason, their appeal was deemed abandoned.

Retaining a new counsel, petitioners filed a complaint with the RTC-Branch 24 of Biñan, Laguna for a writ of injunction to restrain the respondents from dispossessing them of the land in question. The complaint was dismissed outright by the RTC, ruling that it cannot interfere with the judgment of another branch (Branch 25) of the same court in Civil Case No. B-3433. Petitioners then repaired to this court via a petition for certiorari, which was also dismissed outright for their failure to submit the certified true copies of the assailed orders and decision of the lower court.

In the meantime, respondent Baroro moved for the issuance of a writ of execution, which the court granted on October 18, 2001.[3]

On November 9, 2001, petitioners filed with the Court of Appeals a petition to annul the judgment in Civil Case No. B-3433, on the ground that it was rendered with extrinsic or collateral fraud.

In a resolution dated November 28, 2001, the appellate court dismissed the petition stating that:

A perusal of the grounds raised in the instant petition shows that the same are not the proper subject of a petition for annulment. The main thrust of petitioners' cause rests on the alleged lack of due process and that respondents are not actual occupants of the property in question, which, upon closer scrutiny, does not qualify as extrinsic fraud, or lack of jurisdiction which are the only grounds allowed under Rule 47 of the 1997 Rules on Civil Procedure, as amended.

Furthermore, nowhere in the petition is there an allegation on why "the ordinary remedies of new trial, appeal, petition for relief or other remedies are no longer available through no fault of the petitioner(s).

WHEREFORE, premises considered, the instant petition for annulment is hereby DISMISSED.

SO ORDERED.[4]

Petitioners moved for reconsideration of the above decision, which the appellate court denied in a Resolution dated July 3, 2002, thus:

There being no new or novel issues presented by the petitioners and considering that the issues raised in the present motion have already been sufficiently passed upon and threshed out in the questioned Resolution, the Motion for reconsideration must fail.

WHEREFORE, the Motion for Reconsideration is DENIED.

SO ORDERED.[5]

Hence the present course of action, where petitioners, through a new counsel, made this lone assignment of error: "the Court of Appeals erred in not ruling that respondent Regional Trial Court has no jurisdiction to issue the writ of execution in Civil Case No. B-3433, because such writ can be properly issued only by the Municipal Trial Court of Cabuyao, Laguna, in Civil Case No. 89; that accordingly, a petition for annulment of the judgment of respondent trial court and its consequential orders is proper." [6]

In support of their assigned error, petitioners contend that the writ of execution should be deemed void as the RTC has no jurisdiction to issue it. They argue that the power of the court is limited to either upholding or setting aside the validity of the decision of the MTC in Civil Case No. 89. They insist that it had no authority to direct the ejectment of the petitioners as this properly pertains to the MTC.

Additionally, petitioners allege that they were not furnished a copy of the respondent's motion for execution. They point out that this contravenes the provisions of the 1997 Rules on Civil Procedure specifically Section 4 of Rule 13 which requires that every motion and order of the court must be served upon the parties affected; and Section 4 of Rule 15 which mandates that every written motion shall be set forth for hearing by the applicant.

The petition is bereft of merit. We emphasize at the outset that the sudden change of petitioners' theory in contending that the assailed RTC decision in Civil Case No. B-3433 must be annulled does not escape our attention. From arguing in their petition for annulment in the CA that the RTC decision must be voided due to extrinsic or collateral fraud, [7] they now contend for the first time in this appeal by certiorari that it must be set aside allegedly by reason of the trial court's lack of jurisdiction to issue the writ of execution.

The familiar tenet is that appellate courts may not entertain questions of law or facts not raised in the lower courts [8] for that would constitute a change of theory not permissible on appeal. [9] Rules of fair play, justice and due process dictate that petitioners cannot raise for the first time in their appeal by certiorari before us, issues that were not raised in their petition for annulment of judgment before the CA. [10] This doctrine, however, admits of a well-recognized exception with regard to jurisdictional questions. [11] It is settled that the issue of jurisdiction may be raised at any time, even on appeal, provided that its application does not result in a mockery of the tenets of fair play. [12]

This brings us to the issue in this case: whether or not the RTC decision in Civil Case No. B-3433 and the writ of demolition must be annulled allegedly due to the court's lack of jurisdiction to issue the writ of execution. We rule in the negative.

Rule 47 of the 1997 Rules on Civil Procedure governs annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of the RTC. [13] Section 2 of the Rule specifies the grounds when the remedy may be availed thus:

Sec. 2. Grounds for Annulment. -- The annulment may be based only on the grounds of extrinsic fraud and

lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.[14]

Under this rule, extrinsic fraud and lack of jurisdiction are the only two exclusive grounds upon which an annulment of a judgment may be based.[15] Extrinsic or collateral fraud refers to that which prevented the aggrieved party from having a trial or presenting his case to the court, or used to procure the judgment without fair submission of the controversy.[16] Lack of jurisdiction refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim, since in either case, the judgment or final order and resolution are void.[17]

To be sure, the sole ground relied upon by the petitioners in their petition does not qualify as lack of jurisdiction under Section 2 of Rule 47. The alleged lack of jurisdiction of the RTC in issuing the writ of execution in Civil Case No. B-3433 cannot be considered a lack of jurisdiction over their person or over the subject matter of their claim. The lower court duly acquired jurisdiction over them upon their filing of the complaint.[18] The subject matter of their claim for annulment of decision (of the MTC), accion reivindicatoria, and quieting of title are properly cognizable by it.[19]

Likewise, petitioners' contention that the writ of execution issued by the RTC is void for lack of jurisdiction does not hold water. We do not agree that the RTC is circumscribed solely to either upholding or setting aside the validity of the decision of the MTC in Civil Case No. 89 and that it is the latter court which has the authority to direct their ejectment. The complaint filed by the petitioners was not only for annulment of the MTC decision; it was also for accion reivindicatoria and quieting of title. This is unmistakable from the allegations made therein.[20] The RTC was consequently not restricted to determining the validity of the MTC decision. It may, as it correctly did, decide on the issue of who, between petitioners and respondent Baroro, owns the disputed land as ownership is the crux of the matter in an accion reivindicatoria and quieting of title.

Perforce, considering the nature of Civil Case No. B-3433, the RTC has the power to direct the ejectment of the petitioners and order them to vacate the disputed land. Accion reivindicatoria is a remedy seeking the recovery of ownership[21] and includes the *jus possidendi*,[22] *jus utendi*,[23] and *jus fruendi*[24] as well. It is an action whereby a party claims ownership over a parcel of land and seeks recovery of its full possession.[25] As the RTC found that respondent Baroro owns the disputed land, it can also adjudicate its possession in her favor. The writ, therefore, was issued well within its authority.

Petitioners' insistence that it must be the MTC which should order them to vacate the property serves no other purpose but to delay their ejectment therefrom. It will only unduly prevent respondent Baroro from taking immediate possession of the land. Public policy dictates that when a judgment becomes final and executory, the prevailing party should not be denied the fruits of her victory by some subterfuge devised by the losing party.[26]

Finally, petitioners' contention that the writ of execution must be voided for want of notice and hearing is utterly baseless. Records of the case show that a copy of respondent Baroro's motion for execution was served to then counsel on record of the petitioners and a hearing on the motion was held.[27] They cannot complain that they have not been duly notified of the motion; nor can they bewail that they were not given the chance to be heard as they had the full opportunity to ventilate their cause.

IN VIEW WHEREOF, finding no cogent reason to reverse and set aside the assailed Resolutions, the petition is DENIED for lack of merit. Treble costs against petitioners.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

* Should be the Regional Trial Court, Branch 25 of Biñan, Laguna, whose decision in Civil Case No. B-3433 was the subject of the petition for annulment in the assailed Resolutions of the Court of Appeals in CA-G.R. SP No. 67557.

[1] Decision, Civil Case No. 89, p. 6; Rollo, p. 45.

[2] Decision, Civil Case No. B-3433, pp. 7-9; Rollo, pp. 7-10.

[3] See Writ of Demolition, Rollo, p. 61.

[4] Resolution, CA-G.R. SP No. 67557, p. 2; Rollo, p. 32.

[5] Id. at 1; Id. at 34.

[6] Petition, p. 8; Id. at 17.

[7] Petition for Annulment and Application For Issuance of Preliminary Injunction and/or Temporary Restraining Order, p. 1; Id. at 25.

[8] Section 15, Rule 44, 1997 Rules on Civil Procedure.

[9] *Dosch v. NLRC*, 123 SCRA 296 (1983).

[10] See *Reburiano v. CA*, 301 SCRA 342 (1999).

[11] See *De Leon v. CA*, 245 SCRA 166 (1995).

[12] *Jimenez v. Patricia, Inc.*, 340 SCRA 525 (2000).

[13] Section 1, Rule 47, 1997 Rules on Civil Procedure.

[14] Id. at Section 2.

[15] *Republic v. Heirs of Sanch Magdato*, 340 SCRA 115 (2000).

[16] Instances of collateral fraud are acts intended to keep the unsuccessful party away from the court by a false promise of a compromise, or purposely keeps him in ignorance of the suit, or where the attorney fraudulently pretends to represent a party and connives at his defeat, or corruptly sells out his client's interests.

[17] *I Regalado*, Remedial Law Compendium, 7th Rev. Ed., 558 (1999).

[18] Id. at 7.

[19] See Section 19, Batas Pambansa Blg. 129, as amended.

[20] See Complaint, Rollo, p. 46.

[21] *Javier v. Veridiano II*, 237 SCRA 565 (1994).

[22] *Serdoncillo v. Benolirao*, 297 SCRA 448 (1998).

[23] *Emilia v. Bado*, 23 SCRA 183 (1968).

[24] Ibid.

[25] Banayos v. Susana Realty, Inc., 71 SCRA 557 (1976).

[26] Nasser v. CA, 245 SCRA 20 (1995).

[27] Comment, p. 11; Rollo, p. 75.

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