

**ACTIVE REALTY AND DEVELOPMENT CORPORATION, PETITIONER,
VS. BIENVENIDO FERNANDEZ, RESPONDENT.***G.R. No. 157186. October 19, 2007*

Ponente: AUSTRIA-MARTINEZ, J.

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Before the Court is a Petition for Certiorari under Rule 65 of the Revised Rules of Court assailing the May 30, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 64697, which affirmed the February 3, 2000 Decision[2] of the Regional Trial Court (RTC) of Negros Occidental, Branch 54, in Civil Case No. 98-10499. The RTC reversed the Decision[3] of the Municipal Trial Court in Cities (MTCC) of Bacolod City, ordering Bienvenido Fernandez (respondent) to vacate the land allegedly owned by Active Realty & Development Corporation (petitioner). Likewise questioned is the December 5, 2002 Resolution[4] of the CA which denied petitioner's motion for reconsideration.

As culled from the records, the following are the antecedent facts:

On November 27, 1997, petitioner filed a Complaint[5] for unlawful detainer against respondent with the MTCC docketed as Civil Case No. 24073. Petitioner alleged that it had become the owner of the parcel of land covered by Transfer Certificate of Title (TCT) No. T-85541[6] by virtue of the Deed of Sale[7] executed between petitioner and Philippine National Bank (PNB), the previous owner of the land; that respondent had been occupying the subject land by reason of PNB's tolerance; that on March 6, 1997, petitioner sent a letter of demand to respondent asking the latter to vacate the subject property not later than March 31, 1997; and that despite the demand, respondent failed and refused to vacate the subject land, as a consequence of which, petitioner had been unlawfully deprived of the possession of the lot and the rental value of P500.00 per month[8].

On September 3, 1998, respondent filed a Motion to Dismiss,[9] contending that the MTCC lacked jurisdiction over the case as it involved the implementation of agrarian reform and should fall within the exclusive and original jurisdiction of the Department of Agrarian Reform (DAR).[10] Attached to the Motion were two Investigation Reports of Municipal Agrarian Reform Officer Peregrin P. Villa (MARO Villa) addressed to the Provincial Agrarian Reform Office, Negros Occidental, dated March 4, 1997[11] and March 26, 1997.[12]

On February 27, 1998, the MTC issued an Order[13] denying the Motion to Dismiss[14] and considering the motion for reconsideration filed by respondent as his answer. The parties were then directed to submit their position papers supporting their respective claims[15].

In the Supplemental Position Paper[16] filed by the respondent on May 25, 1998, he insisted that there was a pending case between the same parties involving the same property and the same issues before the Department of Agrarian Reform Adjudication Board (DARAB) which was filed on September 19, 1996, docketed as DARAB Case No. R-0605-142-96.[17] In fact, according to the private respondent, an Injunction Order[18] dated January 3, 1996 was issued against the petitioner ordering the latter to cease, desist and refrain from harassing, molesting, disturbing, threatening, ousting, and removing or ejecting from their respective landholdings the petitioners in

DARAB Case No. R-0605-142-96. The DARAB case was resolved by the Provincial Agrarian Report Adjudication Board (PARAB) in its April 14, 1997 Order[19] which directed the DAR-PARO to make a factual finding on the “carpability” or “non-carPability” of the subject land. Aggrieved by the said order, petitioner elevated the matter to the DARAB, where it was docketed as DARAB Case No. 6567.

Meanwhile, on July 27, 1998, the MTC rendered a Decision,[20] the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered ordering the defendants (including herein private respondent), their heirs and successors-in-interest:

- To vacate the premises covered by Transfer Certificate of Title No. T-85541 situated in Eoreco Subdivision, Bacolod City;
- To pay plaintiff (herein petitioner) actual damages in the amount of P500.00 monthly computed from November 27, 1997 until the lot is actually vacated;
- To pay plaintiff the sum of P3,000.00 as attorney’s fees and the amount of cost.

SO ORDERED.[21]

Respondent appealed the MTC Decision to the RTC, where it was docketed as Civil Case No. 98-10499.

On October 28, 1998, the DARAB rendered a Decision[22] in DARAB Case No. 6567 which held that the subject matter is not within its jurisdiction. It was further held that in order to give DARAB jurisdiction over the case, it was necessary that the complaint itself should contain statements of facts that would bring the party clearly within the class of cases under the DARAB’s jurisdiction.

On February 3, 2000 the RTC rendered a Decision[23] reversing and setting aside the MTC judgment. The RTC held: the MTC should have yielded to the DARAB as the quasi-judicial body clothed with primary jurisdiction over agrarian issues; trial court judges had been explicitly reminded by the Court through Administrative Circular 8-92[24] that in cases where agrarian issues are raised, primary jurisdiction is with the DARAB to avoid conflict of jurisdiction with the DAR and for the proper application of the Comprehensive Agrarian Reform Law (R.A. No. 6657); the MTC should have heard the Motion to Dismiss filed by the private respondent for the precise purpose of determining whether or not it possessed jurisdiction over the case; it was clear that the private respondent was seeking the protection of the agrarian laws when he alleged that there was a pending case before the DARAB and that a copy of the complaint in the DARAB was submitted to the trial court; it is provided under Section 7 of R.A. No. 6657 and under Executive Order No. 360, Series of 1989, that the DAR has the right of first refusal of the sale or disposition of the acquired assets of the PNB, the latter being a government financial institution. Petitioner moved for the reconsideration of said decision[25].

The RTC, on February 7, 2001, issued an order denying the motion for reconsideration filed by the petitioner in Civil Case No. 98-10499 per the Order[26] dated February 7, 2001. Petitioner then filed with the CA a petition for review under Rule 42 of the Rules of Court on May 9, 2001, docketed as CA-G.R. SP No. 64697[27].

Pending resolution of the petition and upon information given by counsel for respondent in his “Comment” dated June 15, 2001 that respondent died on May 1, 1999, the CA issued a Resolution[28] requiring Teresita F. Mendoza to cause her appearance as party-respondent in behalf of the deceased respondent.[29] On November 28, 2001, the CA issued a Resolution [30] stating that pursuant to Sec. 10, Rule 13[31] of the Rules of Court, the service to Teresita F. Mendoza of the July 9, 2001 Resolution, although actually unserved, shall be considered completed on August 13, 2001.

On May 30, 2002, the CA rendered a Decision[32] affirming the RTC judgment. The CA took into consideration the Investigation Report[33] of MARO Officer Villa dated March 4, 1997,[34] stating that the land in dispute is part of the 48.35 hectares of agricultural land, covered by 434 transfer certificates of title, with twenty-two registered potential CARP beneficiaries; and recommending that the subject landholding be placed under the coverage of PD 27/CARP.[35]

The CA also took note of the subsequent Investigation Report[36] dated March 26, 1997 of MARO Officer Villa, recommending that the DAR should initiate proceedings in the court of competent jurisdiction to have the said sale declared as null and void in violation of R.A. No. 6657 and A.O. No. 1, Series of 1989; and to initiate action so as to declare the conversion made by the ACTIVE GROUP in violation of A.O. No. 12, Series of 1994.[37]

Petitioner filed a motion for reconsideration[38] but the CA denied the motion in a Resolution dated December 5, 2002.[39]

Hence, the present Petition for Certiorari[40] on the sole issue, to wit:

WHETHER OR NOT THIS CASE PRESENTS AN AGRARIAN DISPUTE. IF IT DOES, JURISDICTION OVER IT SHOULD BE WITH THE DARAB, OTHERWISE, IT SHOULD BE WITH THE REGULAR COURTS.

On June 26, 2003, Atty. Romulo A. Deles, the former counsel of the respondent, filed a Manifestation[41] before the Court insisting that the filing of the instant Petition for Certiorari dated January 17, 2003 constitutes a direct contempt of court. According to Atty. Deles, the filing of a petition for certiorari while administrative proceedings are pending clearly constitutes direct contempt of court as it is clearly an inevitable case of forum shopping.

The Court shall first discuss the procedural aspect of the present case.

The petitioner brought the instant case before the Court via a petition for certiorari under Rule 65 of the Rules of Court.

The proper remedy available to the petitioner should have been a petition for review on certiorari under Rule 45 of the Rules of Court, not a petition for certiorari under Rule 65 of the Rules of Court.

A petition for certiorari under Rule 65 is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction.[42] This remedy can be availed of when “there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[43]”

Appeal by certiorari under Rule 45 of the Rules of Court, on the other hand, is a mode of appeal available to a party desiring to raise only questions of law from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law.[44]

In the present case, the petitioner seeks to reverse the Decision of the CA, which affirmed the Decision of the RTC, which in turn reversed the Decision of the MTC ordering the respondent to vacate the subject property. The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal.[45] Thus, the proper remedy for the petitioner should have been a petition for review on certiorari under Rule 45 of the Rules of Court since the decision sought to be reversed is that of the CA.[46] The existence and availability of the right of appeal proscribes a resort to certiorari, because one of the requisites for availment of the latter is precisely that “there should be no appeal”.[47] The remedy of appeal under Rule 45 of the Rules of Court was still available to the petitioner.

The Court has held that where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.[48] Hence, despite allegation by the petitioner that the CA committed grave abuse of

discretion, this does not negate the fact that the proper remedy should still be a petition for review on certiorari under Rule 45 of the Rules of Court.

While on some occasions, the Court has treated a petition for certiorari under Rule 65 as having been filed under Rule 45 to serve the higher interest of justice, such liberal application of the rules finds no application if the petition is filed well beyond the reglementary period for filing a petition for review without any reason therefor.[49]

In the present case, petitioner filed a Motion for Reconsideration of the CA Decision on June 28, 2002.[50] The Motion for Reconsideration was denied by the CA in its Resolution dated December 5, 2002,[51] a copy of which was received by the petitioner on December 16, 2002.[52] Herein petition was filed on February 12, 2003.[53]

At the time of the filing of the complaint for ejectment, the rule is that in cases where a party filed a motion for reconsideration instead of filing a notice of appeal, the filing will interrupt the running of the 15-day appeal period.[54] Thus, should a party file the motion for reconsideration on the last day of the 15-day reglementary period to appeal, the party is left with only one day to file the notice of appeal upon receipt of the notice of denial of the motion for reconsideration.

In 2005, pending resolution of herein petition, this rule was amended by the Court in *Neypes v. Court Appeals*.^[55] The Court held:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this “fresh period rule” shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.^[56] (Emphasis supplied)

Thus, with the advent of the “fresh period rule,” parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.

A petition for review on certiorari under Rule 45 of the Rules of Court should have been filed with the court fifteen days from December 16, 2002, or from the date of notice of the denial of petitioner’s motion for reconsideration, as provided for in Section 2, Rule 45 of the Rules of Court,^[57] as amended by *Neypes*.^[58] Instead, petitioners filed with the court a petition for certiorari under Rule 65 of the Rules of Court on February 12, 2003, way beyond the “fresh period rule.”

Clearly, the petitioner had lost its right to appeal by failing to avail itself of it seasonably either before or after the “fresh period rule”.

To remedy that loss, petitioner resorted to the extraordinary remedy of certiorari as a mode of obtaining a reversal of the judgment from which they failed to appeal. This cannot be done. The CA decision had become final and had thus gone beyond the reach of any court to modify in any substantive aspect.

The special civil action of certiorari cannot be used as a substitute for an appeal which the petitioner already lost.^[59]

Consequently, the Court should have outrightly dismissed the present petition for the wrong mode of remedy. However, in the exercise of its equity jurisdiction, the Court may disregard procedural lapses, so that a case may be resolved on its merits based on the evidence presented by the parties[60].

Petitioner seeks to evict the private respondent from the subject land, contending that the latter occupied the property by reason of PNB's tolerance.

Petitioner maintains that the allegation of the agrarian nature of a case is a defense which is often raised by a defendant in an ejectment case, and that this allegation is an attempt to divest the regular courts of their jurisdiction over the ejectment case. Petitioner further argues that before the regular courts are divested of their jurisdiction, it would be essential to first establish all the indispensable elements of tenancy relationship, to wit: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is a sharing of the harvests.[61]

Respondent, on the other hand, asserts that the present case from the outset has involved a determination of an agrarian dispute over the land in question originally owned by PNB. Citing the RTC Decision, respondent contends that the Motion to Dismiss filed before the MTC on the pendency of the agrarian case before the DAR Adjudication Board should have caused the MTC to proceed with caution, rather than brushing aside the allegation of the pendency of an agrarian issue before the DAR.[62]

From the outset, respondent has insisted that the MTC had no jurisdiction over the unlawful detainer case. In his Supplemental Position Paper,[63] respondent argued that the MTC cannot take jurisdiction over the case in view of pending DARAB CASE No. R-0605-142-96, between the parties, involving the same property and issues.

Essentially, respondent sought the dismissal of the pending unlawful detainer case in the MTC by invoking the defense of *litis pendentia*.

For *litis pendentia* to lie as a ground for a motion to dismiss, the following requisites must be present: (1) that the parties to the action are the same; (2) that there is substantial identity in the causes of action and reliefs sought; (3) that the result of the first action is determinative of the second in any event and regardless of which party is successful[64].

A closer examination of the records of the case reveals that herein respondent is not included as a party to DARAB CASE No. R-0605-142-96 mentioned by him in his Supplemental Position Paper.[65] *Litis pendentia* cannot, therefore, be invoked by the respondent. Contrary to the claim of respondent, the parties in the unlawful detainer case in the MTC and the DARAB case are different, as he is not included as a petitioner in the DARAB case.

More significantly, not being a party to the DARAB case, respondent has no personality to assert that the DAR has primary jurisdiction over the land subject matter of the MTC case considering that he is not identified as one of the farmers-beneficiaries-petitioners in the DARAB case.[66]

Further, the CA should not have relied on the Investigation Reports of MARO Officer Villa dated March 4, 1997 and March 26, 1997, as the same were not executed pursuant or in relation to any pending case. Moreover, browsing through the Investigation Reports, it is clear that its tenor is only recommendatory or directory in nature. Thus, the execution of the Investigation Reports does not automatically divest the regular courts of their jurisdiction over the unlawful detainer case.

It bears stressing that respondent died on May 1, 1999. However, up to this point, no proper substitution has yet

been effected upon the person of Mrs. Teresita Fernandez, the heir of respondent. In fact, nothing has been heard from Mrs. Teresita Fernandez throughout the pendency of the case before this Court.

Despite several pleadings filed before this Court, nowhere in the records is it shown that Atty. Romeo A. Deles, counsel for the deceased respondent, was authorized by Mrs. Teresita Fernandez to represent her.

The death of a client divests counsel of authority. A dead client has no personality and cannot be represented by an attorney[67]. The relationship of attorney and client ceases[68]. Thus, all pleadings filed by the counsel on behalf of the decedent were all unauthorized pleadings, hence, invalid[69].

Thus, the Manifestation dated June 26, 2003 of Atty. Romeo A. Deles, former counsel of respondent, that the representatives of the petitioner should be punished for direct contempt for deliberate forum shopping does not deserve consideration. First, it was filed by a former counsel; and second, the issue of forum shopping was raised by respondent before the Court for the first time in the June 26, 2003 Manifestation. Well-settled is the rule that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[70]

WHEREFORE, the petition is GRANTED. The May 30, 2002 Decision and the December 5, 2002 Resolution of the Court of Appeals are SET ASIDE. The July 27, 1998 Decision of the Municipal Trial Court, Bacolod City (Branch 2) is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

* The Court of Appeals having been included as a co-respondent, is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

[1] Penned by Associate Justice Andres B. Reyes, Jr., with the concurrence of Associate Justices Conrado M. Vasquez, Jr. and Mario L. Guariña, III, rollo, pp. 129-140.

[2] Id. at 100.

[3] Id. at 70.

[4] Rollo, p. 127.

[5] Id. at 17-19.

[6] Id. at 23.

[7] Id. at 20-22.

[8] Id.

[9] Id. at 56-58.

[10] Id.

[11] CA rollo, pp. 61-63.

[12] Id. at 62-63.

[13] Rollo, p. 31.

[14] Id.

[15] Id.

[16] Id. at 38-41.

[17] Id.

[18] Id. at 48.

[19] Id. at 50.

[20] Id. at 70-74.

[21] Rollo, pp. 70-74.

[22] Id. at 172-177.

[23] Id. at 100-104.

[24] Effective October 12, 1992.

[25] Rollo, pp. 105-108.

[26] Id. at 112.

[27] CA rollo, pp. 5-14.

[28] Id. at 116.

[29] Id.

[30] Id. at 121.

[31] Sec. 10, Rule 13 of the Rules of Court provides: “Sec. 10. Completeness of Service- Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.”

[32] CA rollo, pp. 129-140.

[33] Id. at 61-63.

[34] Id. at 54-57.

[35] Id. at 62-63.

[36] Id. at 64-66.

[37] Id. at 65-66.

[38] Rollo at 123-125.

[39] Id. at 127.

[40] Id. at 4-16.

[41] Id. at 148-153.

[42] *Matute v. Macadaeg*, 99 Phil 340 (1956).

[43] RULES OF COURT, Rule 65, Sec. 1.

[44] RULES OF COURT, Rule 45, Sec. 1.

[45] *Association of Integrated Security Force of Bislig (AISFB)- ALU v. Court of Appeals*, G.R. No. 140150, August 22, 2005, 467 SCRA 483.

[46] Section 1, Rule 45 of the Rules of Court provides: "Section 1. Filing of petition with Supreme Court- A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals x x x."

[47] *Mercado v. Court of Appeals*, No. L-44001, June 10, 1988, 162 SCRA 75.

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

[49] *People v. Sandiganbayan*, G.R. No. 156394, January 21, 2005, 449 SCRA 205.

[50] *Rollo*, p.8.

[51] *CA rollo*, p.167.

[52] *Rollo*, p. 8.

[53] *Rollo*, p. 1.

[54] Section 2, Rule 45 of the Rules of Court in relation to Section 2, Rule 40 of the Rules of Court which provides: "[T]he period of appeal shall be interrupted by a timely motion for new trial or reconsideration. x x x"

[55] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[56] *Neypes v. Court of Appeals*, *supra* note 55, at 644-645.

[57] Section 2, Rule 45 of the Rules of Court provides: "Sec. 2. Time for filing; extension: The petition shall be filed within fifteen (15) days from notice of judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for reconsideration filed in due time after notice of the judgment. x x x"

[58] *Neypes v. Court of Appeals*, *supra* note 55.

[59] *Ho v. Lacsas*, G.R. No. 142664, October 5, 2005, 472 SCRA 92; *Caballes v. Court of Appeals*, G.R. No. 163108, February 23, 2005, 452 SCRA 312; *Swire Agricultural Products, Inc. v. Hyundai Corporation*, G.R. No. 163934, June 9, 2005, 460 SCRA 77.

[60] *Security Bank Corporation v. Indiana Aerospace University*, G.R. No. 146197, June 27, 2005, 461 SCRA 260.

[61] *Rollo*, p.8

[62] *Id.* at 261-268.

[63] *Id.* at 38-41.

[64] *Sangyong Corporation v. Unimarine Shipping Lines, Inc.*, G.R. No. 162727, November 18, 2005, 475 SCRA 523; *Sherwill Development Corporation v. Sitio Sto. Nino Residents Association, Inc.*, G.R. No. 158455, June 28, 2005, 461 SCRA 517; *Arquiza v. Court of Appeals*, G.R. No. 160479, June 8, 2005, 459 SCRA 753.

[65] The complaint filed before the DAR on September 19, 1996 is entitled, "Conrado Sortida, Leonilo Alib,

Rosendo Abenido, Fernando Lumaug, Antonio Enema, Wenifredo Alib, Hernane Crispino, Wilfredo Alib, Clarita Villa, Simplicio Alib, Lolita Vicera, Pabiolo Velez, Jr., Jose Enema, Antonio Beliarde, Romeo Ibon, Manuel Faniego, Norberto Enema, Nilo Gamayao, Sr., and Mandalagan Small Farmers Association, represented by its President Simplicio Alib, Petitioners v. Active Group of Companies represented by its Manager Slogo Soliven and Chapman Security Agency represented by its officer (Ret.) Capt. Rodolfo Raloto,” rollo, pp. 43-44.

[66] Id.

[67] Lavina v. Court of Appeals, G.R. Nos. 78295 & 79917, April 10, 1989, 171 SCRA 691.

[68] Haberer v. Court of Appeals, G.R. Nos. L-42699 & L-42709, May 26, 1981, 104 SCRA 540.

[69] Caseñas v. Rosales, No. L-18707, February 28, 1967, 19 SCRA 462; Barrameda v. Barbara, 90 Phil. 718 (1952).

[70] Republic v. Court of Appeals, G.R. No. 147245, March 31, 2005, 454 SCRA 516.

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