

**MANUEL DACUBA, PETITIONER, VS. THE COURT OF APPEALS,
EVANGELINE BRAGAIS PURI, JANE BRAGAIS, EDMUNDO BRAGAIS,
BENJAMIN BRAGAIS, REBECCA B. TUPOS, NORMA B. ELAURZA, RAUL
BRAGAIS, ...**

G.R. No. 161382. November 25, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for certiorari and mandamus under Rule 65 of the Rules of Civil Procedure of the Resolution of the Court of Appeals in CA-G.R. SP No. 79215, dismissing the petition for review filed by Manuel Dacuba of the decision, on appeal, of the Regional Trial Court of Iriga City, Branch 36, in Civil Case No. IR No. 3079.

The Antecedents

On November 20, 1996, the respondents filed an Amended Complaint for Declaration of Nullity of Sale, Cancellation of Title, Recovery of Possession, Reconveyance of Title and Damages, against the petitioner with the Municipal Trial Court (MTC) of Buhi, Camarines Sur, docketed as Civil Case No. 143. After trial, the MTC rendered judgment in favor of the respondents on June 2, 1999. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1)

Declaring the Deed of Sale (Exhibit E) as null and void and as cancelled.

2)

Declaring TCT No. 9626 issued in the name of Manuel Dacuba as null and void also the same having been issued on the basis of a falsified deed of sale. Consequently, the Registrar of Deeds of Camarines Sur is hereby directed to cancel the same and all the other copies thereof and that Original Certificate of Title No. RP-7612 (8095) in the name of Fermina Morandarte be revived and/or reinstated in the registration book together with the owner's duplicate certificate which the registrar of deeds should deliver only to the duly appointed judicial administrator of the estate of Fermina Morandarte;

3)

Declaring the sale by Orlando Bragais of his share to the land in question in favor of the defendant as valid and effective; consequently, the heirs of Orlando Bragais are hereby directed to execute in favor of Manuel Dacuba the deed of conveyance based on the approved deed of partition and approved technical description of the subdivided lots of Lot No. 1776, or, if physical division of the land in question into small lots be impracticable, for the plaintiffs to exercise the rights granted them under Articles 1088 and 1620 of the New Civil Code by paying/reimbursing the defendant the amount of P5,000.00;

4)

Directing the defendant to turn over to the plaintiffs the possession of the land in question, except the 1/9th portion thereof which Orlando Bragais has already sold to the former, immediately after the property is partitioned by the legal heirs of Fermina Morandarte; and

5)

For the defendant to pay costs.

The plaintiffs' claim for actual, and moral damages, as well as attorney's fees and litigation expenses cannot be awarded for lack of merit. On the other hand, defendant's compulsory counterclaim for lack of legal and factual basis is also dismissed.

SO ORDERED.[1]

The petitioner appealed the decision to the RTC, Iriga City, Branch 36, where he filed his Memorandum on Appeal. On March 31, 2003, the RTC rendered judgment[2] dismissing the appeal and affirming the decision of the MTC. The petitioner filed a motion for reconsideration of the decision, but the RTC denied the same.

The petitioner then filed a petition for the review of the decision with the Court of Appeals (CA). Appended to the petition were the following:

Annex "A"

- the Amended Complaint in Civil Case No. 143, filed with Municipal Trial Court of Buhi, Camarines Sur;

Annex "B"

- the Answer To Amended Complaint (Annex "A");

Annex "C"

- the Decision rendered by the Municipal Trial Court in said Civil Case No. 143;

Annex "D"

- the Decision rendered by the Regional Trial Court in Civil Case No. Ir-3079 (MTC Case No. 143); and

Annex "E"

- the Order rendered by the Regional Trial Court denying Defendant-Appellant's Motion for Reconsideration.[3]

The petitioner assigned the following errors to the RTC in the petition:

I

THE REGIONAL TRIAL COURT ERRED IN NOT DECLARING THE MUNICIPAL TRIAL COURT OF BUHI, CAMARINES SUR, TO BE WITHOUT JURISDICTION OVER CIVIL CASE NO. 143.

II

THE REGIONAL TRIAL COURT ERRED IN NOT HOLDING THAT THE CAUSE OF ACTION OF THE PLAINTIFFS IN CIVIL CASE NO. 143, IF THERE WAS, HAD ALREADY BEEN LOST BY PRESCRIPTION, LACHES, AND/OR ESTOPPEL.

III

THE REGIONAL TRIAL COURT ERRED IN AFFIRMING THE MTC'S DECISION NULLIFYING THE DEED OF SALE MARKED EXHIBIT "E" (ALSO EXH. 2) CONSIDERING ABSENCE OF FRAUD OR BAD FAITH ON THE PART OF THE PETITIONER; AND IN NOT HOLDING THAT THE PETITIONER HAD BECOME THE OWNER OF THE LAND BY ACQUISITIVE PRESCRIPTION.

IV

THE REGIONAL TRIAL COURT ERRED IN NOT DECLARING THE RESPONDENTS TO HAVE ACTED IN BAD FAITH IN FILING CIVIL CASE NO. 143.

V

THE REGIONAL TRIAL COURT ERRED IN AFFIRMING THE MTC'S DECISION AWARDING ONLY ONE-NINTH (1/9) OF THE LAND IN DISPUTE TO THE PETITION (SIC) OR RETURN TO THE PETITIONER THE AMOUNT OF P5,000.00 PAID THEREFOR, EVEN IF IT BE ASSUMED THAT THE MUNICIPAL TRIAL COURT HAD JURISDICTION TO TRY CIVIL CASE NO. 143.[4]

On October 7, 2003, the appellate court issued a Resolution dismissing the petition for failure of the petitioner -

... to accompany said petition with the necessary and pertinent pleadings and documents such as the memorandum of appeal filed before the Regional Trial Court by the petitioner and the Motion for Reconsideration dated 20 May 2003, as required by Section 2, Rule 42 of the 1997 Rules of Civil Procedure.[5]

The petitioner received a copy of the resolution on October 14, 2003 and filed a motion for reconsideration thereof on October 28, 2003. He claimed that he had complied with the requirement of attaching the pertinent annexes to his petition under Section 2, Rule 42 of the Rules of Court; even if he failed to do so, such failure was not a valid justification for the dismissal of his petition.

However, on December 3, 2003, the CA issued a Resolution denying the said motion. The petitioner received said resolution on December 8, 2003, and filed his petition for certiorari with this Court on December 23, 2003. He now assails the resolutions of the CA, contending that:

THE RESPONDENT COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE PETITION IN CA-G.R. SP NO. 79215 MARKED ANNEX "IV" AND IN HOLDING THAT ANNEXES "A", "B", "C", "D", AND "E" THEREOF DID NOT SUFFICE TO SATISFY THE REQUIREMENTS UNDER SECTION 2(d) OF RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE.[6]

The petitioner asserts that he had complied with Section 2, Rule 42 of the 1997 Rules of Civil Procedure because he had appended to his petition with the CA the required pleadings and records related to the primal issue of jurisdiction raised therein. He avers that he raised the issue of the lack of jurisdiction of the MTC in his Memorandum on Appeal and that this was noted by the RTC in its decision, which was, in turn, appended to his petition as Annex "C" to Annex "IV." Anent the other issues raised by him, the petitioner contends that they can be determined from a reading of the Amended Complaint; hence, there was no need for him to still append to his petition for review the Memorandum on Appeal in the RTC. Besides, under Section 7, Rule 42 of the Rules of Court, the petitioner adds, the RTC may order the elevation of the entire records.

In their comment on the petition, the respondents aver that, by his own admission in the petition at bar, the petitioner failed to comply with Section 2, Rule 42 of the 1997 Rules of Civil Procedure. They further claim that the petitioner's plea for substantial compliance with the Rules of Court must be rejected because his petition in the CA and in this Court are dilatory in nature.

Petitioner's Mode of

Appeal Improper

The petitioner's petition for certiorari and mandamus in this Court under Rule 65 of the Rules of Court assailing the October 7, 2003 Resolution of the Court of Appeals, which dismissed his petition for review and its resolution denying his motion for reconsideration, is improper. Indubitably, the December 3, 2003 resolution of the CA was a final order. The remedy of the petitioner was to file a petition for review on questions of law in this Court, conformably to Section 1, Rule 45 of the Rules of Court, which reads:

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, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

The petitioner instead filed a petition for certiorari and mandamus.

The petition cannot even qualify as a petition for certiorari and mandamus under paragraphs 1 and 3, Rule 65 of the 1997 Rules of Civil Procedure.[7] The petition does not contain any allegation that the Court of Appeals abused its discretion amounting to excess or lack of jurisdiction in issuing the assailed resolutions and that the petitioner has no appeal or plain, effective and speedy remedy in the ordinary course of law. In point of fact, the petitioner has a remedy of appeal under Section 1, Rule 45 of the 1997 Rules of Civil Procedure, which is a speedy and adequate remedy. Neither does the petition allege that it was the ministerial duty of the CA to give due course to the petition. Hence, on its face, the petition is insufficient in form.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED DUE COURSE. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, p. 61.

[2] Id. at 62-65.

[3] Id. at 15.

[4] Id. at 26-27.

[5] Id. at 14.

[6] Id. at 7.

[7] SECTION 1. Petition for certiorari.-When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

...

SEC. 3. Petition for mandamus.-When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act, which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

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