# INOCENCIO ALIMBOBOYOG, PETITIONER, VS. HON. COURT OF APPEALS AND PAZ NOBLE-NOBLEFRANCA, RESPONDENTS.

*G.R. No. 163655. June 16, 2006*

Ponente: TINGA, J.

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**TINGA, J.:**

In this Petition for Certiorari[1] dated June 7, 2004, Inocencio Alimboboyog (Alimboboyog) assails the Decision[2] of the Court of Appeals in CA-G.R. SP. No. 73861 dated March 12, 2004 as it was allegedly rendered without jurisdiction, there having been no prior valid service of pleadings and court orders upon him.

In October 1995, private respondent Paz Noble-Noblefranca (Noblefranca) instituted an action before the Department of Agrarian Reform Adjudication Board (DARAB) Office of the Provincial Adjudicator against Alimboboyog for collection of rentals and ejectment with damages. The complaint was later amended to reflect the correct technical description of the property. Noblefranca prayed therein that Alimboboyog be directed to pay back rentals representing her share as landowner amounting to 156 cavans of palay or its money equivalent covering the period from 1988-1995.

Alimboboyog filed an answer claiming that he was no longer obliged to remit the landowner's share because he had already acquired the property by operation of law through the issuance of a Certificate of Land Transfer (CLT) in the name of his father, Domingo Alimboboyog.

On December 5, 1996, the Provincial Adjudicator rendered a decision in favor of Noblefranca, ordering Alimboboyog to vacate the landholding, turn over its peaceful possession to Noblefranca, and pay the latter back rentals consisting of 156 cavans of palay or its monetary equivalent.

Alimboboyog's Notice of Appeal was denied due course in an Order dated April 7, 1997 for having been filed out of time. Subsequently, on April 14, 1997, the writ of execution was implemented and Noblefranca was placed in possession of the land.

Four (4) years later or on January 10, 2001, the DARAB Central Office reversed the decision of the Provincial Adjudicator. According to the DARAB in its Resolution[3] dated October 7, 2002 disposing of Noblefranca's motion for reconsideration, despite the fact that Alimboboyog's Notice of Appeal was filed beyond the reglementary period, it opted to relax the application of the rules and admit the appeal in order to achieve agrarian justice.

Noblefranca questioned the reversal on petition for review with the Court of Appeals, arguing that the DARAB was devoid of authority to assume appellate jurisdiction over a case which had already attained finality. The appellate court granted Noblefranca's petition and set aside the decision of the DARAB for being contrary to the facts of the case as found by the Provincial Adjudicator. This Decision is the subject of the instant case.

According to Alimboboyog, despite the fact that he was represented by counsel in the proceedings before the Provincial Adjudicator and the DARAB, Noblefranca deliberately omitted to serve a copy of her petition for

review on Alimboboyog's counsel. Instead, she served it upon the DARAB and Alimboboyog himself at his address in Camarines Sur. Consequently, he was allegedly deprived of his day in court.

Noblefranca filed a Comment[4] dated August 16, 2004, arguing that recourse to this Court via the instant Rule 65 petition is improper because the remedy of appeal under Rule 45 of the Rules of Court is still available to Alimboboyog. However, he allegedly let the period for filing a petition for review lapse. Besides, the petition puts in issue alleged errors in judgment on the part of the appellate court and not grave abuse of discretion. Noblefranca further points out that Alimboboyog actually received a copy of the petition filed with the Court of Appeals.

Alimboboyog filed a Reply[5] dated January 24, 2005, reiterating his arguments.

The records reveal that Alimboboyog was represented by counsel in the proceedings before the Provincial Adjudicator. It was, in fact, a lawyer from the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform who filed on Alimboboyog's behalf an answer to Noblefranca's complaint. It also appears that the same counsel represented Alimboboyog in his appeal before the DARAB.

Noblefranca, however, served a copy of her petition with the Court of Appeals on Alimboboyog himself and not the latter's counsel.[6] She insists that Rule 43 of the Rules of Court, under which her petition was filed, does not require that the same be served upon respondent's (petitioner Alimboboyog) counsel but merely that it be served on the adverse party, which is what she did.

This was a flawed procedural step in view of the requirement under Sec. 2, Rule 13 of the Rules of Court[7] and pertinent jurisprudence that service of notice when a party is represented by counsel should be made upon counsel and not upon the party.[8] However, we cannot close our eyes to the fact that Alimboboyog had not previously brought this matter to the attention of the Court of Appeals prior to filing the instant petition.

By his own admission, Alimboboyog actually received a copy of the appellate court's Decision in late March 2004 and communicated his receipt thereof to his counsel on May 20, 2004. If, as he posits in this petition, the period to file a pleading or motion questioning the Decision of the Court of Appeals should be reckoned from counsel's receipt thereof, he should have filed through counsel a motion for reconsideration with the Court of Appeals within 15 days from such notice. Instead of filing a motion for reconsideration, however, Alimboboyog filed the present petition for certiorari.

The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of respondent. In this case, the plain and adequate remedy was a motion for reconsideration of the assailed Decision and the resolution thereof, which was not only expected to be but would actually have provided an adequate and more speedy remedy than the present petition for certiorari.[9]

The filing of a motion for reconsideration would have afforded the Court of Appeals the opportunity to correct the errors attributed to it and allowed Alimboboyog to ventilate his side. His failure to file such motion deprived the appellate court of its right and opportunity to review and purge its decision of any oversight.[10]

In view of the fact that Alimboboyog failed to take advantage of the procedural remedy of filing a motion for reconsideration without any concrete, compelling and valid explanation, we cannot allow him to now seek relief by certiorari.

As a final note, we add that although the merits of the case are not in issue in this petition, the same having been filed solely to question Noblefranca's failure to serve a copy of the petition which she filed with the Court of


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Appeals on Alimboboyog's counsel, we nonetheless reviewed the substantive conclusions reached by the appellate court and found them to be in accord with the facts of the case, law and pertinent jurisprudence.

It appears that Alimboboyog, as affirmed by the Provincial Adjudicator's Decision, pins his cause on the CLT issued to his father. However, a CLT merely evinces that the grantee thereof is qualified to avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under Pres. Decree No. 27. It is not a muniment of title that vests upon the farmer/grantee absolute ownership of his tillage.[11] Moreover, the subsequent cancellation of the said CLT on the ground that Noblefranca's property is exempt from the coverage of Operation Land Transfer invalidates Alimboboyog's claim of full ownership of the property.

WHEREFORE, the instant petition is DISMISSED. No pronouncement as to costs.

**SO ORDERED.**

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

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[1] Rollo, pp. 3-20.

[2] Id. at 118-129; Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong.

[3] Id. at 55-58.

[4] Id. at 137-142.

[5] Id. at 145-148.

[6] Id. at 67-81. The Affidavit of Service attached to the Petition filed by private respondent with the Court of Appeals indicates that the pleading was served on petitioner himself at his address in San Francisco, Buhi, Camarines Sur.

[7] Sec. 2. Filing and service, defined.—Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

[8] Mancenido v. Court of Appeals, 386 Phil. 627 (2000); See also National Power Corporation v. Tac-an, 445 Phil. 515 (2003).[9] Pure Foods Corporation v. NLRC, G.R. No. 78591, March 21, 1989, 171 SCRA 415, 424; See also D.C. Crystal, Inc. v. Laya, G.R. No. 53597, February 28, 1989, 170 SCRA 734.

[10] Pure Foods Corporation v. NLRC, G.R. No. 78591, March 21, 1989, 171 SCRA 415, 425.

[11] Martillano v. Court of Appeals, G.R. No. 148277, June 29, 2004, 433 SCRA 195.


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