

**BENEDICTA M. SAMSON AND MARCIAL M. SAMSON, PETITIONERS,
PRESENT: VS. HON. JUDGE GERALDINE C. FIEL-MACARAIG, BANK OF
THE PHILIPPINE ISLANDS, FAR EAST BANK AND TRUST CO., ATTY.
JU...**

G.R. No. 166356. February 02, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 28 September 2004 and Resolution dated 15 December 2004 in CA-G.R. SP No. 82114. The Court of Appeals dismissed the petition for certiorari[3] filed by Benedicta M. Samson and Marcial M. Samson against Hon. Judge Geraldine C. Fiel-Macaraig, the Bank of the Philippine Islands (BPI), the Far East Bank and Trust Co. (FEBTC), Atty. Julia Cecily Coching-Sosito, and the Register of Deeds of Marikina City.

The factual and procedural antecedents of this case are as follows:

Sometime in 1998, petitioners Benedicta M. Samson and Marcial M. Samson obtained a loan amounting to P10,000,000 from FEBTC. The loan was secured by a real estate mortgage over four parcels of land located in Marikina City and covered by Transfer Certificate of Title (TCT) Nos. N-1521, N-1522, N-1226, and N-1227. When petitioners failed to comply with the terms of the loan agreement, FEBTC filed an application for extra-judicial foreclosure of the real estate mortgage with the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court (RTC) of Marikina City. FEBTC's application was given due course, and a Notice of Sheriff's Sale was issued, setting the public auction sale of the mortgaged properties on 8 June 2000, at 10:00 in the morning. Prior to the sale, the Notice of Sheriff's Sale was duly published in Rizal-Metro Gazette,[4] and was certified by Sheriff IV Edgar Pulan of the RTC of Marikina City to have been duly posted in three public places where the mortgaged real properties were located.[5]

On 8 June 2000, only one bidder, FEBTC, submitted its bid, thereby causing the sheriff to postpone the public auction sale to 29 June 2000, in accordance with SC AM No. 99-10-05-0[6] and the Notice of Sheriff's Sale which states, *inter alia*:

In the event that there are less than two (2) participating bidders in the original date of auction sale as afore-stated, the same shall be postponed to June 29, 2000 at the same time and place without need of republication and reposting [of] this notice.[7]

On 29 June 2000, the mortgaged real properties were sold at public auction to FEBTC as the highest bidder,[8] and a Certificate of Sale was issued in favor of the bank.

Almost two years later, or on 4 June 2002, petitioners, together with Pepito, Zenaida, Julieta, Edgardo, Rolando, Rempson, and Rocky, all surnamed Samson, filed a case for "Annulment of Extra-judicial Foreclosure and/or Nullification of Sale and the Certificates of Title, plus Damages and with Prayer for a Temporary Restraining

Order [TRO] and/or Writ of Preliminary Injunction." They questioned the validity of the 29 June 2000 auction sale for alleged lack of posting and publication requirements. Impleaded as defendants in the case were BPI,[9] FEBTC, Julia Cecily Coching-Sosito, in her capacity as Clerk of Court and Ex-Officio Sheriff of the RTC of Marikina City, and the Register of Deeds of Marikina City. The case was docketed as Civil Case No. 2002-803-MK and raffled to Branch 192 of the RTC of Marikina City.

On 19 July 2002, the Registrar of Deeds[10] of Marikina City filed a Manifestation[11] stating that the certificates of title subject of the case had already been cancelled and the titles to the mortgaged properties were consolidated in the name of BPI on 7 March 2002. The Registrar of Deeds also claimed that the complaint stated no cause of action against him for it mentioned no wrongful act on his part, whether in his official or personal capacity; neither was there any allegation of negligence or omission of his official functions.[12] The Registrar of Deeds likewise mentioned that, at most, the Registrar and the Register of Deeds of Marikina City were impleaded only as nominal parties in the case.[13]

A hearing on the application for a TRO and/or Writ of Preliminary Injunction was held on 2 August 2002.[14] On 9 August 2002, private respondent BPI filed its Answer with Counterclaim and Opposition. Public respondent Julia Cecily Coching-Sosito, the Clerk of Court and Ex-Officio Sheriff of the RTC of Marikina City did not file an answer.

On 20 December 2002, the RTC of Marikina City, Branch 192, issued an Order denying plaintiffs' application for TRO and/or Writ of Preliminary Injunction.[15] Six months later, or on 20 June 2003, the RTC issued an Order dismissing the complaint for failure to prosecute for an unreasonable length of time.[16]

Plaintiffs filed a Motion for Reconsideration, but this was denied by the RTC in its Order dated 22 December 2003. Plaintiffs, except Benedicta and Marcial Samson, filed a Notice of Appeal dated 27 January 2004. On 10 February 2004, Benedicta and Marcial Samson filed with the Court of Appeals a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure.

On 28 September 2004, the Court of Appeals rendered judgment dismissing the petition.[17] The appellate court ruled that a writ of certiorari lies only where there is no appeal or plain, speedy, and adequate remedy in the ordinary course of law. The availability of the right to appeal precludes recourse to the special civil action for certiorari. The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, it was a subject for an ordinary appeal, not a petition for certiorari. The Court of Appeals added that even assuming that the petitioners availed of the proper remedy, they failed to show that public respondent gravely abused her discretion by acting in a despotic or arbitrary manner, or that she was motivated by passion or personal hostility when she issued the assailed Orders.

Petitioners filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution dated 15 December 2004.[18]

On 4 February 2005, petitioners filed the instant petition for review before this Court. Petitioners claim that the appellate court erred in dismissing the petition for certiorari since public respondent RTC Judge Geraldine Fiel-Macaraig gravely abused her discretion amounting to lack of jurisdiction when she dismissed the case (Complaint for Annulment of Extra-judicial Foreclosure and/or Nullification of Sale and the Certificates of Title, plus Damages and with Prayer for TRO and/or Writ of Preliminary Injunction) for failure to prosecute despite the fact that one of the defendants, Ex-Officio Sheriff Julia Cecily Coching-Sosito, had not yet submitted her responsive pleading; hence, the issues were not yet joined and it was still premature for petitioners to move for a pre-trial of the case. Petitioners also questioned the validity of the second public auction for lack of posting and publication.

The petition has no merit.

The appellate court correctly ruled that the petition for certiorari was not the proper remedy. A writ of certiorari lies only for an error of jurisdiction. It can be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[19] Where the error is not one of jurisdiction but an error of law or fact which is a mistake of judgment, certiorari is not available.[20] In such case, the remedy is appeal.

The assailed RTC Order dated 20 June 2003 was issued when petitioners failed to move for a pre-trial of the case for annulment of the extra-judicial foreclosure in accordance with Section 1, Rule 18 of the Revised Rules of Civil Procedure which provides:

Section 1. When conducted. -- After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move ex parte that the case be set for pre-trial. (Emphasis supplied)

In said Order, the RTC dismissed the case with prejudice for failure to prosecute for an unreasonable length of time, pursuant to Section 3, Rule 17 of the Rules of Court which states, thus:

Section 3. Dismissal due to fault of plaintiff. -- If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (Emphasis supplied)

The RTC Order dated 20 June 2003 was a final judgment which disposed of the case on the merits. This was even clarified in the subsequent RTC Order of 22 December 2003 (which denied petitioners' motion for reconsideration) wherein the lower court stated that: "Therefore, the dismissal was 'with prejudice' or a dismissal that had the effect of adjudication upon the merits in accordance with Section 3, Rule 17 of the Rules of Court."

The remedy to obtain reversal or modification of the judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.[21] The availability of the right to appeal precludes recourse to the special civil action for certiorari. The RTC Order subject of the petition was a final judgment which disposed of the case on the merits; hence, it was a subject for an ordinary appeal, not a petition for certiorari.

Even assuming that certiorari may lie, the Court still cannot grant the instant petition because the petitioners failed to show that public respondent, in issuing the assailed Orders, acted without or in excess of jurisdiction, or gravely abused her discretion amounting to lack or excess of jurisdiction. As mentioned earlier, the RTC issued the assailed Order in accordance with Section 3, Rule 17, in relation to Section 1, Rule 18 of the Revised Rules of Civil Procedure. There is no showing that the RTC judge issued the Order in a despotic or arbitrary manner, or that she was motivated by passion or personal hostility against petitioners. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility,[22] and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[23] Such is wanting in this case.

We agree with private respondent BPI that the failure of the Ex-Officio Sheriff to file her Answer should not have prevented petitioners from performing their duty under Section 1 of Rule 18. Petitioners could have availed of

other remedies, such as the filing of a motion to declare Ex-Officio Sheriff in default,[24] to avoid unnecessary delay in court proceedings.

The other issues raised by petitioners involve questions of fact which are not proper subjects of this case.

WHEREFORE, we DENY the petition. We AFFIRM the Court of Appeals' Decision dated 28 September 2004 and Resolution dated 15 December 2004 in CA-G.R. SP No. 82114.

SO ORDERED.

Corona[*], Brion, Del Castillo, and Perez, JJ., concur.

[*] Designated additional member per Special Order No. 812.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Eubulo G. Verzola and Monina Arevalo-Zenarosa, concurring.

[3] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[4] CA rollo, p. 108.

[5] Id. at 107.

[6] SC AM No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgages), which was promulgated on 14 December 1999, provides in Paragraph 5 that, "(n)o auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date."

[7] CA rollo, p. 109.

[8] Rollo, p. 72.

[9] BPI and FEBTC merged in 2000, with BPI as the surviving entity; rollo, p. 97.

[10] Registrar of Deeds Edgar D. Santos.

[11] CA rollo, pp. 139-140.

[12] Id. at 139.

[13] Id. at 140.

[14] Rollo, p. 482.

[15] Id. at 73.

[16] Id. at 157.

[17] Id. at 71-76.

[18] Id. at 77-78.

[19] Sec.1, Rule 65 of the Revised Rules of Civil Procedure. See also *Angara v. Fedman Development Corporation*, 483 Phil. 495, 505 (2004).

[20] *Camlian v. Commission on Elections*, 338 Phil. 474, 479 (1997).

[21] *Sawadjaan v. Court of Appeals*, 498 Phil. 552, 564 (2005), citing *Heirs of Padilla v. Court of Appeals*, 469 Phil. 196 (2004).

[22] *Angara v. Fedman Development Corporation*, *supra* note 19, citing *Okabe v. Gutierrez*, 473 Phil. 758 (2004) and *Ala-Martin v. Sultan*, 418 Phil. 597, 603 (2001).

[23] *Id.*, citing *De Baron v. Court of Appeals*, 420 Phil. 474, 482 (2001).

[24] Sec. 3, Rule 9 of the 1997 Revised Rules of Civil Procedure.

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