

ELMER F. CERVANTES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, HON. NORMA C. PERELLO, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY,...

G.R. No. 166755. November 18, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition under Rule 45 of the Rules of Court assails the November 22, 2004 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 87330 outrightly dismissing petitioner's petition for certiorari for insufficiency in form and substance; and the January 13, 2005 Resolution[2] denying the motion for reconsideration.

On December 6, 1995, petitioner filed a petition for annulment of marriage and custody of minor children before the Regional Trial Court of Muntinlupa City, Branch 276, docketed as Civil Case No. 95-194.[3]

On December 13, 1996, the trial court resolved to grant the annulment of the marriage based on private respondent's psychological incapacity, award to petitioner the custody of the minor children, and order the liquidation of the conjugal properties.[4]

Private respondent filed a Motion for Reconsideration/New Trial and to Admit Answer which the trial court granted in an order dated February 12, 1997. In addition, private respondent was awarded visitation rights over the minor children.[5]

Petitioner moved to reconsider the February 12, 1997 Order which was granted by the trial court in the Order of October 10, 1997. The trial court set aside the February 12, 1997 Order and affirmed the December 13, 1996 Resolution granting the annulment of the marriage and directed the parties to submit an inventory of their conjugal assets.[6]

Thereafter, private respondent submitted an inventory of conjugal assets which included their Ayala Alabang Village house and lot. Petitioner manifested that the conjugal abode be adjudicated in his favor considering that he was awarded the custody of the children while private respondent was adjudged to be the party in bad faith.[7]

On August 4, 1999, the trial court ordered that the conjugal properties which include the conjugal abode, certificate of stock and motor vehicle, should be sold and the proceeds thereof be divided equally between the parties.[8]

On October 20, 1999, respondent filed a motion for execution of the August 4, 1999 resolution,[9] while on November 18, 1999, petitioner prayed for its reconsideration. On March 15, 2000, the trial court declared that the August 4, 1999 resolution has become final. A writ of execution was accordingly issued on March 17, 2000.[10]

Petitioner thus filed a petition for certiorari before the Court of Appeals seeking to annul the August 4, 1999 Resolution and the March 17, 2000 Writ of Execution.[11]

The Court of Appeals dismissed the petition and held that the August 4, 1999 Resolution of the trial court had long become final and executory for failure of petitioner to file a timely motion for reconsideration or appeal. It also denied petitioner's motion for reconsideration.[12]

Petitioner then elevated the case to the Supreme Court, which was docketed as G.R. No. 144810. However, in a Resolution dated June 9, 2003, the Third Division of the Supreme Court denied the petition for lack of merit.[13]

On September 22, 2003, petitioner filed a motion for the forfeiture of the share of the private respondent in the net profits of the conjugal properties in favor of the common children and to adjudicate the Ayala Alabang residence to him pursuant to Articles 40, 43 (2), 50 and 129 (9) of the Family Code,[14] which the trial court denied in an Order dated August 2, 2004.[15] It held that the order dated August 4, 1999 directing the equal division of the conjugal properties cannot be superseded inasmuch as the same had already become final, affirmed by the Court of Appeals, and the Supreme Court, without violating the fundamental rules of procedure.[16]

Thereafter, petitioner filed a Manifestation and Motion clarifying that what he filed on September 22, 2003 was a motion to forfeit the share of the private respondent in the net profits of the conjugal properties and not a motion to amend an order, and praying that the same motion be resolved by the trial court.[17]

On August 27, 2004, the trial court resolved petitioner's manifestation and motion as follows:

This is a MANIFESTATION AND MOTION, which is unopposed.

Evaluating the same, the Court did not find merit on the motion, considering that the DECISION by this Court has long become final and executory, and this Court has lost jurisdiction over the case. If it is the intention of the movant to forfeit the declared share of the Plaintiff in the conjugal assets, he should file a new complaint for that purpose.

To grant the requested forfeiture thru this motion would in effect reopen the case and the DECISION, which has long become final and executory.

Therefore, the motion is denied.

It is SO ORDERED.[18]

Instead of filing a motion for reconsideration, petitioner filed a petition for certiorari with the Court of Appeals which rendered the assailed November 22, 2004 Resolution, to wit:

No motion for reconsideration to the assailed August 27, 2004 Order was filed by petitioner before resorting to this petition. Furthermore, no explanation had been alleged to show that the assailed August 27, 2004 Order is a final order as opposed to a mere interlocutory order. There is no allegation and justification on why the filing of a motion for reconsideration was dispensed with.

WHEREFORE, premises considered, being insufficient in form and substance, this petition is hereby DISMISSED outright.

SO ORDERED.[19]

Petitioner's motion for reconsideration was denied, hence, this petition for review.

Petitioner contends that filing a motion for reconsideration before recourse to the special civil action of certiorari would be futile because the trial court had already ordered the execution of the judgment, citing the case of *Guevarra v. Court of Appeals*. [20] He claims that the trial court was amply given opportunity to correct itself when he filed the Manifestation and Motion clarifying the August 2, 2004 Order.

The petition lacks merit.

Section 1, Rule 65 of the Rules of Court provides:

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, nor 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. (Emphasis supplied)

As held in *Flores v. Sangguniang Panlalawigan of Pampanga*,^[21] the "plain" and "adequate remedy" referred to in the foregoing Rule is a motion for reconsideration of the assailed Order or Resolution, the filing of which is an indispensable condition to the filing of a special civil action for certiorari,^[22] subject to certain exceptions, to wit:

(a)

where the order is a patent nullity, as where the court a quo has no jurisdiction;

(b)

where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c)

where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d)

where, under the circumstances, a motion for reconsideration would be useless;

(e)

where petitioner was deprived of due process and there is extreme urgency for relief;

(f)

where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g)

where the proceedings in the lower court are a nullity for lack of due process;

(h)

where the proceedings was ex parte or in which the petitioner had no opportunity to object; and

(i)

where the issue raised is one purely of law or public interest is involved.[23]

An examination of the records, specifically the petition for certiorari filed with the Court of Appeals, reveals that petitioner not only failed to explain his failure to file a motion for reconsideration of the August 27, 2004 Order of the trial court; he also failed to show sufficient justification for dispensing with the requirement. Neither did he show that the case falls under any of the above exceptions. It was only in the motion for reconsideration of the November 22, 2004 Resolution of the Court of Appeals and in the instant petition that he explained why he dispensed with the filing of prior motion for reconsideration.

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.[24] Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so,[25] which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.

Moreover, petitioner's reliance in the case of *Guevarra v. Court of Appeals*[26] to justify the failure to file a motion for reconsideration is misplaced. Although we held in *Guevarra* that a motion for reconsideration may be dispensed with in cases of urgency like when the trial court had ordered the execution of the judgment, this circumstance must be clearly shown by the petitioner as a concrete, compelling and valid reason, and not just leave it for the courts to ascertain.

Even assuming that the petition for certiorari may be given due course by the Court of Appeals despite failure to file a prior motion for reconsideration, still it is dismissible considering the decision of the trial court has long become final and executory. As correctly ruled by the trial court, the manifestation and motion to forfeit the share of the private respondent filed by the petitioner has the ultimate effect of modifying the decision in regard to the liquidation of the conjugal properties.

Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. The only recognized exceptions are the corrections of clerical errors or the making of the so-called nunc pro tunc entries, in which case no prejudice to any party, and, of course, where the judgment is void,[27] none of which is present in this case.

WHEREFORE, the petition is DENIED. The November 22, 2004 and January 13, 2005 Resolutions of the Court of Appeals in CA-G.R. SP No. 87330, are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 27-28. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr.

[2] Id. at 29.

[3] CA Rollo, p. 49.

[4] Id. at 17-21. Penned by Judge Norma C. Perello.

[5] Id. at 49.

[6] Rollo, p. 78.

[7] CA Rollo, p. 50.

[8] Id. at 51.

[9] Rollo, p. 79.

[10] Id. at 39-40.

[11] Rollo, 79.

[12] Id. at 80.

[13] Id. at 81.

[14] CA Rollo, p. 70.

[15] Rollo, pp. 82-83.

[16] Id. at 82.

[17] Id. at 84-86.

[18] Id. at 87.

[19] Id. at 27.

[20] G.R. Nos. L-49017 & L-49024, August 30, 1983, 124 SCRA 297.

[21] G.R. No. 159022, February 23, 2005, 452 SCRA 278, 282.

[22] *Acance v. Court of Appeals*, G.R. No. 159699, March 16, 2005, 453 SCRA 548, 558.

[23] Id. at 558-559.

[24] *Nayve v. Court of Appeals*, 446 Phil. 473, 482-483 (2003).

[25] *Flores v. Sangguniang Panlalawigan of Pampanga*, *supra* at 282-283.

[26] Supra.

[27] Mayon Estate Corporation v. Altura, G.R. No. 134462, October 18, 2004, 440 SCRA 377, 386.

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