

EDITHA S. MEDINA, RAYMOND A. DALANDAN, AND CLEMENTE A. DALANDAN, AS THEIR ATTORNEY-IN-FACT, PETITIONERS, V. SPS. NICOMEDES AND BRIGIDA LOZADA, RESPONDENTS.

G.R. No. 185303. August 01, 2018

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CAGUIOA, J:

Before the Court is a petition[1] for review on certiorari (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated August 26, 2008 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. SP No. 102990, dismissing the petition for certiorari filed by the petitioners and the Resolution[4] dated November 10, 2008 of the CA denying the motion for reconsideration filed by the petitioners.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

It appears that a Complaint was filed by the plaintiffs (herein petitioners) against the defendants (herein private respondents), docketed as Civil Case No. 07-0041[5]. Petitioners failed to append a copy thereof to their instant Petition.

A Motion to Dismiss with Motion to Punish for Contempt dated 10 May 2007 was filed by the defendants on the grounds that the cause of action is barred by prior judgment; plaintiffs have absolutely no cause of action; the court has no more jurisdiction over the subject matter of the action; plaintiffs and their counsel are guilty of blatant forum shopping; and the action has prescribed. Plaintiffs filed their Vehement Opposition dated 11 June 2007.

Respondent Judge [Lorna Navarro Domingo, as presiding judge of the Regional Trial Court of Las Piñas City, Branch 201 (RTC)] issued the first assailed Order dated 27 July 2007 dismissing the case on the ground of res judicata, which reads:

"Under consideration is the Motion to Dismiss with Motion to Punish for Contempt filed by defendants through counsel on the ground that the cause of action is barred by prior judgment and this court has no more jurisdiction over the subject matter of this action.

"Opposition was filed by plaintiffs through counsel and alleged therein that res judicata does not apply since the Order dated January 29, 2004, the dismissal for failure of plaintiffs and counsel to attend the hearing is not a judgment on the merits.

"As pointed out by the plaintiffs through counsel, res judicata or bar by prior judgment is a doctrine which holds a matter adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.

"For the doctrine to apply four (4) requirements must be met:

(1.) the former judgment or order must be final;

'(2.) it must be a judgment, or an order on the merits;

'(3.) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and

'(4.) there must be between the first and second actions identity of parties, of subject matter and of cause of action.

"The Court finds that when the defendants alleged as one of the grounds barred by a prior judgment, they were referring to decision of LRC No. M-24 rendered by the Regional Trial Court, Branch 134 of Makati Metro Manila on February 23, 1989 confirming the title of applicant Nicomedes J. Lozada, the defendants [sic] in this case.

"The Court can safely conclude that the four (4) requisites of res judicata have been complied with in this case.

"WHEREFORE, premises considered, the Court hereby order (sic) for the Dismissal of this case on the ground of res judicata.

"As to the Motion for Contempt, the Court hereby DENIES the said Motion for lack of merit.

"SO ORDERED. "

Plaintiffs filed a Motion for Reconsideration dated 26 September 2007. The same was denied, for lack of merit, by the respondent Judge in the second assailed Order dated 28 December 2007.[6]

The petitioners filed a petition for certiorari before the CA.

Ruling of the CA.

The CA in its Decision dismissed the petition. The CA reasoned out:

In the case at bar, the assailed Orders dismissing the Complaint in Civil Case No. 07-0041 on the ground of res judicata and denying the Motion for Reconsideration are final orders and completely dispose of the case. Appeal, and not a special civil action for certiorari, is the correct remedy to elevate said final orders. The manner of appealing said final orders is provided under Rule 41 of the 1997 Rules of Civil Procedure, as amended. The instant Petition for Certiorari cannot be used by petitioners as a substitute for a lost appeal. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.[7]

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the Petition is DISMISSED. Costs against petitioners.

SO ORDERED.[8]

The petitioners filed a Motion for Reconsideration dated September 12, 2008, which was denied by the CA in its Resolution[9] dated November 10, 2008.

Hence, the instant Petition. The respondents filed their "Comments"[10] dated February 19, 2009. The petitioners filed a Reply[11] dated March 23, 2009. The parties filed their respective Memorandum dated October 10, 2009[12] for the respondents and dated October 17, 2009[13] for the petitioners.

The Issue

The Petition raises the sole issue of whether the CA erred in dismissing the petition for review by certiorari under Rule 65.

The Court's Ruling

The Petition lacks merit.

The petitioners argue that the Order[14] dated July 27, 2007 of the RTC, dismissing their action for Quieting of Title and Reconveyance docketed as Civil Case No. 07-0041 on the ground of res judicata, and the Order[15] dated December 28, 2007, denying the motion for reconsideration of the earlier Order, are mere interlocutory Orders and are not final Orders because their action was not adjudged on its merits and an Order denying a motion for reconsideration is not appealable.[16]

On the other hand, the respondents argue that an Order granting a motion to dismiss is final, being an adjudication on the merits, so that the proper remedy is appeal; and the Order granting a motion to dismiss becomes final 15 days from receipt thereof with prejudice to the re-filing of the same case once such Order achieves finality.[17] They further argue that certiorari proceedings cannot be used as substitute for a lost appeal.[18]

The CA ruled:

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[19] An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff is to appeal the order.[20]

Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy.[21] The special civil action for certiorari is a limited form of review and is a remedy of last recourse. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.[22]

It bears emphasis that the general rule is that a writ of certiorari will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of certiorari under Rule 65 are mutually exclusive and not alternative or cumulative.[23] Time and again, the High Court has reminded members of the bench and bar that the special civil action of Certiorari cannot be used as a substitute for a lost appeal.[24]

In the case at bar, the assailed Orders dismissing the Complaint in Civil Case No. 07-0041 on the ground of res judicata and denying the Motion for Reconsideration are final orders and completely dispose of the case. Appeal, and not a special civil action for certiorari, is the correct remedy to elevate said final orders. The manner of appealing said final orders is provided under Rule 41 of the 1997 Rules of Civil Procedure, as amended. The instant Petition for Certiorari cannot be used by petitioners as a substitute for a lost appeal. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.[25]

The Court totally agrees with the CA. Indeed, Section 1, Rule 41 of the Rules of Court (Rules) mandates that appeal is the remedy with respect to a judgment or final order that completely disposes of the case; and a petition for certiorari is unavailable if there is appeal, or any plain, speedy and adequate remedy in the ordinary course of law pursuant to Section 1, Rule 65 of the Rules. The petitioners filed their Rule 65 certiorari petition before the CA on April 8, 2008[26] after they received a copy of the RTC Order dated December 28, 2007 denying their Motion for Reconsideration thereof on February 7, 2008.[27] By the time they filed their CA petition for certiorari, the reglementary period to appeal the RTC Order of dismissal of the petitioners' Complaint to the CA had already lapsed. In fact, their CA petition for certiorari was even filed a day late, bearing in mind that 2008 was a leap year and the period to file a Rule 65 certiorari petition is not later than 60 days from notice of the

judgment, order or resolution pursuant to Section 4, Rule 65 of the Rules.

Also, it is basic in remedial law that an order of dismissal of the complaint is a final order which is subject to appeal.

Consequently, the CA committed no reversible error.

WHEREFORE, the Petition is hereby DENIED. The Decision dated August 26, 2008 and Resolution dated November 10, 2008 of the Court of Appeals in CA-G.R. SP No. 102990 are AFFIRMED.

SO ORDERED.

Carpio (Chairperson),[*] Peralta, Perlas-Bernabe and A. Reyes, Jr., JJ., concur.

[*] Senior Associate Justice (Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended)

[1] Rollo, pp. 3-23, excluding Annexes.

[2] Id. at 25-32. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Mario L. Guariña III and Teresita Dy-Liacco Flores concurring.

[3] Fourteenth Division.

[4] Rollo, pp. 34-36.

[5] Civil Case No. 07-0041 is a complaint for "Quieting of Title, Reconveyance with Damages with Lis Pendens". The Complaint alleges that the petitioners are heirs and successors-in-interest of the late Clemente Dalandan (Clemente), who during his lifetime owned several parcels of land, including several plots of salt beds (called "banigan" or "irasan") located at Balite, Ilaya, Las Piñas City. Those salt beds (property) are being claimed by the petitioners as having been inherited by Clemente's two children (Emiliano Dalandan and Maria Dalandan) and after the latter's death, the property passed to Carmencita Dalandan and petitioners Raymond Dalandan and Clemente Dalandan as the children of Emiliano Dalandan and Clara A. Dalandan as well as to petitioner Editha Medina being the heir of Maria Dalandan Silverio and Julian Silverio. On July 10, 1997, the respondents were able to obtain an Original Certificate of Title No. (OCT) 0-78 covering an area of 31,535 square meters of land located at Balite, Ilaya, Las Piñas City which was covered by a Tax Declaration in the name of respondent Nicomedes Lozada after the cancellation of Clemente's Tax Declaration. The OCT of the respondents was obtained pursuant to a Decision dated February 23, 1989 of the Regional Trial Court of Makati, Metro Manila, Branch 134. The petitioners also alleged that notwithstanding the said Decision and OCT, they were "bequeathed with a parcel of land x x x measuring 10,929 square meters covered by Tax Declaration No. 005-37120." On January 11, 2001, the heirs of Clemente Dalandan filed a Complaint against Spouses Lozada entitled "Heirs of the Late Clemente Dalandan vs. Nicomedes and Brigida Lozada" for quieting of title and reconveyance and docketed as Civil Case No. LP-0010. However, because of plaintiffs' non-appearance during the pre-trial conference on January 29, 2004, the said case was dismissed. The said dismissal was appealed to the CA and the Supreme Court, which affirmed the dismissal by the lower court. In Civil Case No. 07-0041, the petitioners prayed that a judgment be rendered in their favor, decreeing that they are the only ones entitled to the ownership and possession of the 10,929 square meters lot covered by Tax Declaration No. 005-37120 in the name of Clemente, and for reconveyance to them of the excess of the two hectares covered by OCT 0-78 as corresponding to the 10,929 square meters property or so much thereof that the respondents had fraudulently encroached belonging to the petitioners. See Complaint, id. at 49-54.

[6] Rollo, pp. 26-28.

[7] Id. at 30. Citations omitted.

[8] Id.

[9] Id. at 34-36.

[10] Id. at 92-104.

[11] Id. at 114-124.

[12] Id. at 128-145.

[13] Id. at 146-164.

[14] Id. at 88-89. Penned by Judge Lorna Navarro Domingo.

[15] Id. at 90.

[16] Petition, id. at 15-17.

[17] Comments, id. at 101; citations omitted.

[18] Id., citing Congressional Commercial Corporation v. CA, 230 Phil. 188, 201 (1986) and Dela Cruz v. IAC, 219 Phil. 382, 385 (1985).

[19] Rollo, p. 29, citing Madrigal Transport, Inc. v. Lapanday Holdings Corporation, 479 Phil. 768, 778 (2004).

[20] Id., citing Madrigal Transport, Inc. v. Lapanday Holdings Corporation, id. at 784.

[21] Id., citing Madrigal Transport, Inc. v. Lapanday Holdings Corporation, id. at 782-783.

[22] Id, citing Balayan v. Acorda, 523 Phil. 305, 309 (2006).

[23] Id. at 29-30, citing Young v. Spouses Sy, 534 Phil. 246, 266 (2006).

[24] Id. at 30, citing Cathay Pacific Steel Corporation v. Court of Appeals, 531 Phil. 620, 631 (2006).

[25] Id., citing Mercado v. Court of Appeals, 484 Phil. 438, 444 (2004) and Nagkahiusang Mamumuo sa Picop Resources, Inc. - Southern Phils. Federation of Labor (NAMAPRI-SPFL) v. CA (5th Division), 537 Phil. 35, 44 (2006).

[26] Petition, rollo, p. 11.

[27] CA Petition for Review, id. at 72.

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