

## **EDGAR C. NUQUE, PETITIONER, VS. FIDEL AQUINO AND SPOUSES ALEJANDRO AND ERLINDA BABINA, RESPONDENTS.**

*G.R. No. 193058. July 08, 2015*

Ponente: PERALTA,\* J.

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### **PERALTA,[\*] J.:**

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Resolutions[1] of the Court of Appeals (CA), dated March 17, 2010[2] and July 21, 2010[3] in CA-G.R. SP No. 112750. The Resolution of March 17, 2010 dismissed petitioner's Petition for Certiorari with Urgent Motion for Ocular Inspection and Status Quo Order,[4] while the Resolution dated July 21, 2010 denied petitioner's Motion for Reconsideration.

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

Herein petitioner is the owner of three parcels of land denominated as Lot Nos. 6018, 6019 and 2625 which are all located in Gerona, Tarlac. He acquired these lots in a public auction sale conducted by the Sheriff of Tarlac City on October 21, 1999. The subject properties were originally owned by one Hospicia Cardona (Cardona) who was able to obtain titles over the said properties as early as 1935 (TCT No. 10327 covering Lot No. 2625) and 1941 (OCT No. 2501 covering Lot Nos. 6018 and 6019). It is through Cardona's titles that petitioner derived his ownership over the disputed lands after purchasing them in the abovementioned auction sale. However, petitioner later discovered that, in 1996, herein respondent Fidel Aquino (Aquino) was able to obtain title (OCT No. P-17563) over Lot Nos. 6018 and 2625 by means of filing an application for free patent. It appears, however, that when Aquino filed his application for free patent, the subject lots were already owned by Cardona. Nonetheless, Aquino, was able to sell the subject properties to the spouses Alejandro and Erlinda Babina (respondent spouses) who also obtained title (TCT No. 351681) over the disputed lots on January 24, 2002. Thus, on September 9, 2002, petitioner filed with the Regional Trial Court (RTC) of Tarlac City a Complaint for cancellation of title with damages.

On November 3, 2004, the RTC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered declaring null and void OCT No. P-17563 and TCT No. 351681 and declaring as valid OCT No. 2501 and TCT 10327. Defendant Fidel Aquino is also ordered to pay plaintiff the sum of Php 10,000.00 as nominal damages and Php5,000.00 as reasonable attorney's fees and to pay the costs. The defendants Fidel Aquino and Spouses Babina are likewise ordered to pay their respective shares in the relocation survey that was conducted in the amount of Php5,500 each, or a total of Php 11,000.00. The Office of the Provincial Prosecutor should conduct an investigation to determine any possible criminal liability of the DENR Personnel and of Fidel Aquino and to file the necessary charges if warranted.

The defendants are ordered to submit to this Court the owner's copy of TCT No. 351681 within ten (10) days from finality of this decision. Otherwise, the Court will order its cancellation even without the surrender of said title.

SO ORDERED.[5]

The case, which was appealed by respondent Alejandro Babina (Alejandro), eventually reached this Court. On July 19, 2006, the Court issued a Resolution which resolved to consider the case closed and terminated for failure of Alejandro to file his petition for review on certiorari. Per Entry of Judgment[6] issued by this Court, the Resolution had become final and executory on September 13, 2006.

Respondent spouses' title over the disputed lots was subsequently canceled pursuant to an Order[7] issued by the RTC dated March 30, 2009. In the meantime, petitioner learned that respondent spouses were occupying the subject properties.

On May 4, 2009, petitioner filed with the RTC an Ex-Parte Motion for Writ of Possession[8] praying that he be placed in possession of the subject lots, considering that respondent spouses no longer have any right over the said properties as a consequence of the cancellation of their title.

Respondent spouses, on the other hand, filed a motion for reimbursement of expenses contending that they are possessors in good faith and that they are entitled to be reimbursed for the improvements they have introduced on the subject property, the alleged value of which is P7,000,000.00

On November 26, 2009, the RTC issued an Order[9] denying the motions of both petitioner and respondent spouses. As to petitioner's motion, the RTC held that petitioner's complaint was an action for the cancellation of titles and that there was no prayer for the recovery of possession of the disputed lots. The trial court also ruled that its November 3, 2004 Decision had already become final and executory and has, thus, become immutable and unalterable. Thus, the RTC concluded that, since petitioner's motion for the issuance of a writ of possession is not a legal consequence of his action for cancellation of title, the said motion can no longer be entertained after the finality of the decision in the action for cancellation of title.

Petitioner then filed with the CA a special civil action for certiorari under Rule 65 of the Rules of Court.

In its assailed Resolution of March 17, 2010, the CA dismissed petitioner's certiorari petition on the ground that the latter failed to move for the reconsideration of the questioned RTC Order before filing his petition for certiorari.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated July 21, 2010.

Hence, the instant petition for review on certiorari based on the following arguments:

PUBLIC RESPONDENT COMMITTED A SERIOUS ERROR IN REQUIRING A PRIOR MOTION FOR RECONSIDERATION BEFORE THE FILING OF SUBJECT PETITION FOR CERTIORARI AND CONSIDERING THE ABSENCE THEREOF A FATAL DEFECT, GIVEN THE OBVIOUS FUTILITY OR USELESSNESS OF A MOTION FOR RECONSIDERATION BASED ON THE EXPRESSED SENTIMENTS OF THE TRIAL COURT IN ITS DECISION, WHICH IS ONE OF THE GROUNDS FOR DISPENSING WITH THE REQUIREMENT OF A PRIOR MOTION FOR RECONSIDERATION.

PUBLIC RESPONDENT COMMITTED A SERIOUS ERROR IN MIS-APPRECIATING THAT THE ORDER OF NOVEMBER 26, 2009 IS IN THE NATURE OF A FINAL ORDER, HENCE, IT FALLS WITHIN THE EXCEPTION TO THE RULE REQUIRING A PRIOR MOTION FOR RECONSIDERATION.

SUBJECT PETITION FOR CERTIORARI AND MANDAMUS IS MERITORIOUS, THUS, THE SAME SHOULD BE GIVEN DUE COURSE BY PUBLIC RESPONDENT TO AVOID A MISCARRIAGE OF JUSTICE.[10]

The petition lacks merit.

At the outset, the Court agrees with petitioner's contention that the RTC Order denying his motion for the issuance of a writ of possession is in the nature of a final order, as it left nothing else to be resolved thereafter. Proceeding from this premise, petitioner's proper remedy was, thus, to appeal the RTC Order. It is settled that the proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal.[11] This holds true even if the error 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, order or resolution.[12] The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal.[13] Thus, it was wrong for petitioner to immediately resort to the extraordinary remedy of certiorari when he could have appealed the assailed RTC Order. While it is true that the availability of an appeal does not foreclose recourse to a special civil action of certiorari in cases where appeal is not adequate, equally beneficial, speedy and sufficient,[14] petitioner failed to demonstrate that these instances are present in the instant case.

In any case, even granting that petitioner's resort to a certiorari petition is proper, the Court finds no error on the part of the CA in dismissing his petition on the ground that he failed to move for the reconsideration of the assailed RTC Order prior to filing his certiorari petition.

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.[15]

Aside from the remedy of appeal discussed above, our jurisprudence is replete with cases holding that 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.[16] It is true that there are exceptions to the above rule, 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.[17] However, an examination of the petition for certiorari filed with the CA would reveal that petitioner failed to demonstrate that the case falls under any of the above exceptions. Neither was he able to show any other sufficient justification for dispensing with the requirement of filing a 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.[18] 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.[19] Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not.[20] To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do.[21]

Petitioner insists that he has specifically stated in his petition that "[i]n view of the apparent futility of filing a motion for reconsideration of said Order, petitioner opted not to file a motion for reconsideration thereof." [22] However, as stated above, petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. Petitioner cannot, on his bare and self-serving representation that reconsideration is unnecessary, unilaterally disregard what the law requires and deny the RTC its right to review its pronouncements before being hailed to court to account therefore [23] In addition, petitioner claims that the trial court's ratiocination in its assailed Order "gives a clue as to the trial court's mindset that the case is considered closed and finished." [24] In this respect, petitioner ought to be reminded of the hornbook rule that judgments become final and executory or, as petitioner puts it, "closed and finished," only upon the lapse of the reglementary period to appeal or to file a motion for reconsideration without any appeal or motion for reconsideration having been made." [25]

Finally, the Court finds it proper to reiterate that procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. [26] While the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. [27] It is true that litigation is not a game of technicalities, but it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. [28] In the present case, the procedural shortcut taken by petitioner finds no justification either in law or in jurisprudence. It is fatal to his cause of action.

WHEREFORE, the instant petition is DENIED. The Resolutions of the Court of Appeals, dated March 17, 2010 and July 21, 2010, in CA-G.R. SP No. 112750 are AFFIRMED.

### **SO ORDERED.**

Leonardo-De Castro,[\*\*] J., Villarama, Jr., Perez,[\*\*\*] and Perlas-Bernabe,[\*\*\*\*] JJ., concur.

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[\*] Per Special Order No. 2071 dated June 23, 2015.

[\*\*] Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2095 dated July 1, 2015.

[\*\*\*] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 28, 2015.

[\*\*\*\*] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2072 dated June 23, 2015.

[1] Penned by Associate Franchito N. Diamante, with Associate Justices Amelita G. Tolentino and Priscilla J. Baltazar-Padilla, concurring.

[2] Annex "A" to Petition, rollo, pp. 36-40.

[3] Annex "B" to Petition, id. at 41-44.

[4] Id. at 94-113.

- [5] Id. at 51-52.
- [6] Annex "D" to Petition, id. at 55.
- [7] Annex "F" to Petition, id. at 63-64.
- [8] Annex "C" to Petition, id. at 71-73.
- [9] Annex "M" to Petition, id. at 91-93.
- [10] Rollo, pp. 19-20.
- [11] *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 577.
- [12] Id. at 577.
- [13] Id. at 577-578.
- [14] See *Union Bank of the Philippines v. Conception*, 552 Phil. 730, 746 (2007).
- [15] Emphasis supplied.
- [16] *Santos v. Cruz*, 519 Phil. 61, 68, (2006), citing *Cervantes v. Court of Appeals*, 512 Phil. 210, 216 (2005) and *Mayor Flores v. Sangguniang Panlalawigan of Pampanga*, 492 Phil. 377, 381 (2005).
- [17] Id.
- [18] *Cervantes v. Court of Appeals*, supra note 16, at 217.
- [19] Id.
- [20] Id.
- [21] Id.
- [22] See Petition for Certiorari, rollo, p. 96.
- [23] See *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 752 (2002).
- [24] See present Petition for Review, rollo, p. 23.
- [25] *Debs Reyes v. Hon. Flores, et. al.*, 628 Phil. 170, 179 (2010).
- [26] Id. at 180.
- [27] Id.
- [28] Id.

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July 27, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on July 8, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 27, 2015 at 11:30 a.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

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